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Copyright and Fair Use for Graduating Studio Art Majors

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FAIR USE IN THE VISUAL ARTS: LESSON PLANS FOR LIBRARIANS

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Fair Use in the Visual Arts: Lesson Plans for Librarians

Occasional Paper no. 17

Alexander Watkins, Bridget Madden,
Alexandra Provo, Danielle Reay, and Anna
Simon

Art Libraries Society of North America

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Introduction

Alexander Watkins

It all started when a librarian wanted a cake with a 19th-century picture of Frankenstein's monster on it. Much to everyone's surprise the baker refused to make such a cake, claiming it would be a copyright violation. The whole endeavor ended in failure when nothing could convince the wayward baker that the image is in the public domain with no copyright at all. Unfortunately, when it comes to copyright "a little learning is a dangerous thing." All too often, it's a warning that also describes copyright and fair use instruction in libraries. A little bit of copyright knowledge can result in an overly restrictive interpretation that fails to acknowledge the fair use rights of users. Like the well-intentioned monster himself, it can do more harm than good.

When art information professionals are asked to teach students about copyright, the request is often intended to scare students rather than teach them how to take advantage of their rights. How then do we get students and teachers to the point that knowledge of copyright

and fair use is empowering rather than restricting, where students know their obligations but also the limits of copyright? The College Art Association (CAA) *Code of Best Practices in Fair Use for the Visual Arts*, with its easily understandable language, is a key tool in ensuring copyright instruction helps student fully exercise their rights. The lesson plans in this book all use the Code to create learning experiences that empower students to understand copyright and take advantage of fair use in their art, design, and academic practices.

Copyright and fair use instruction is part of the expanding role of art information professionals, and one that many of us may be hesitant to undertake. The lesson plans in this book will help those new to copyright instruction teach the Code through engaging activities and assignments. The lesson plans are also meant to inspire teachers experienced with fair use instruction through creative ideas and new ways to integrate copyright instruction into art classes, digital humanities projects, and design education.

The lesson plans all incorporate active learning components and many integrate concepts from the ACRL *Framework for Information Literacy*. Active creative work is frequently used in these lesson plans to have students not just learn about fair use but enact it. These innovative approaches will hopefully not just bank information about fair use with students but help them integrate it into their own artistic and knowledge practices.

Understanding copyright and fair use is a key component of visual literacy and has only become more important in our image-saturated world. Students are existing in an online world full of digital images and media, and are often reusing and remixing them in their online life. Visual literacy and fair use can also be directly transferable to

student's real life careers, especially for those in art and design disciplines. The lesson plans in this book aim to motivate student learning by demonstrating the relevance of fair use to students' daily lives and professional practices.

FAIR USE & TRANSFORMATIVITY

The concept of transformativity is at the heart of fair use. Everything from databases to artworks to search engines to scholarly articles can be transformative. Understanding the many ways one work can transform another is key to putting fair use into practice. The lesson plans in this section use innovative techniques to get students to grapple with the concept of transformativity.

Leslie Christianson and Amanda Avery contributed an extremely creative lesson plan that focuses on the idea of transformativity. Students create mind maps of concepts present in appropriation art and the work it appropriates. This has students develop visual literacy skills while also demonstrating the power of art to transform works and create new meaning.

Lijuan Xu and Nestor Gil collaborated to create a lesson and assignment that helps art students learn about appropriation by actually doing it. The class divides into two groups to debate the *Prince v. Cariou* appropriation case. This active learning is then reinforced through an assignment in which students create a work of appropriation art that transforms its subject.

FAIR USE & ZINE MAKING

Zine culture is built on appropriation and self-expression. Creating zines is low-barrier and inexpensive, making it an ideal form for student work. Transformative use is often built into zines, and fair use

is a key right in zine making. As libraries build zine collections these lessons can be used to inspire new zines, which may further enrich a fledgling collection.

Emilee Matthews uses zines to get students to grapple with issues of identity and community. Students use fair use as a tool to consider ethical and legal considerations around appropriation in the making of zines.

Lindsey Reynolds's lesson plan comes out of a museum library setting in which art students appropriated library and museum collection images to create original zines. The lesson plan uses critiques to have students demonstrate understanding, as students explain and defend their appropriation in front of an audience of their peers.

FAIR USE & ETHICS

Often when we approach appropriation and copyright we think solely about whether or not we are legally permitted to use a work. But we don't want students to become, to paraphrase *Jurassic Park*, so preoccupied with whether or not they could, that they don't stop to think if they should. Unfortunately, power dynamics of race, class, and gender frequently recur in art appropriation, and students should think about the effects of using someone else's image.

Jessica Hronchek's lesson plan uses the Code to have students research case studies and present their findings. Her lesson engages the legal and ethical implications of appropriation practice as she asks students to differentiate between these issues.

Laura Dimmit has students grapple with both moral and economic rights in her lesson plan. Students engage with contemporary case studies that raise the question of how later modification can change

an artist's meaning. Students must work through how transformation can create a fair use case while also raising difficult questions about artists' moral rights.

FAIR USE & APPROPRIATION ART

Students can't fully understand fair use in the art world without knowledge of the historical precedents of artistic appropriation. Reuse in art is by no means new, and this long history can help students understand context. Examples of recent case studies help students follow the explosion of appropriation in contemporary art and the changing legal interpretations around fair use.

Molly Shoen's lesson plan casts students in the role of judge. Using case studies she has students evaluate fair use cases and pronounce their verdict. Discussion is generated by revealing the judge's ruling and comparing to student verdicts, as well as to contemporary fair use law.

Allan Kohl introduces students to a wide range of issues relating to appropriation, law, and ethics in arts, focusing on empowering students to build upon works created by others. He uses copious visual examples to illustrate the concepts, including local examples of appropriation art.

FAIR USE & PROFESSIONAL PRACTICE

Copyright and fair use issues don't end when students graduate. One of the reasons copyright and fair use instruction is so valuable is that it can be even more important for professional practice. The demonstrated relevancy of these skills can motivate student learning.

Karyn Hinkle's lesson plan has students applying fair use to create a technical how-to manual. Her innovative lesson combines technical

writing skills with visual literacy and image use. Students are also asked to think about how fair use will apply in professional situations.

Cindy Derrenbacker presents a lesson plan that deals with fair dealing, architectural practice, and professional ethics. Her lesson helps student think about architectural inspiration and cross-pollination through both an ethical and a copyright lens. She addresses how we can teach students skills that are transferable to their professional practice in terms of legal practices, professional attribution, and credit-sharing.

FAIR USE & ART HISTORY

Fair use isn't just important to artists, it's equally important for art historians. Writing art history without employing fair use means paying expensive image permissions. The cost can be so prohibitive that it affects art historians' choice of subject. However, art historical analysis can be a transformative fair use, a right that is getting increasing buy-in from art publishers.

Bridget Madden has created a tool for authors to track their images and fair use rationale. Her lesson plan is built for developing art history scholars, teaching them key skills for academic success.

Meredith Wisner takes a critical perspective on copyright for art history students working on digital humanities projects. She has students grapple with the inequalities of copyright law and how fair use represents one way for individuals to challenge power structures in art.

CONCLUSION

Fair use instruction is an exciting opportunity for art information professionals. It presents the chance to work with students to teach them not just about copyright, but about image ethics, appropriation,

and transformation—all vital components of visual literacy. Key to making the most of these opportunities is moving beyond lectures about the dangers of image reuse filled with outdated and overly draconian interpretations of copyright. Instead, we must work to empower students to make truly informed decisions about their image use, armed with full knowledge of their rights and responsibilities—both legal and ethical.

Fair Use Today

Peter Jaszi

Editor's Note: In order to get the most out of the lesson plans presented in this book, it is important to have an up-to-date understanding of fair use and copyright. How fair use is considered by the courts has changed substantially over time. Presenting outdated cases and superseded precedents as guiding examples will have an unwarranted chilling effect on students' fair use rights. This excellent essay by Peter Jaszi is adapted from the appendix of the Code of Best Practices for Fair Use in the Visual Arts. Here we have reproduced it at the front of the book because it contains foundational knowledge for teaching about fair use in today's world.

FAIR USE TODAY¹

Some background information about the fair use doctrine, seen in the context of copyright law and its objectives, may be helpful in thinking about how to use the Code. The goal of US copyright law is to promote the progress of knowledge and culture. Its best-known feature is protection of owners' rights. But copying, quoting, recon-

textualizing, and reusing existing cultural material can be critically important to creating and spreading knowledge and culture.

That is why there is a social bargain at the heart of copyright law. That bargain is: Our society offers creators some exclusive rights in copyrighted works, to encourage them to produce culture. The compensation that creators receive from exploiting their copyrights is important as an incentive to this ultimate end; it is not an end in itself. Society also limits copyright in important ways, so that the primary intended beneficiary of copyright law—the public—can benefit from those works. Most basically, copyright lasts for a limited time, and then works enter the public domain, where they are free for use by all. Other limitations allow the use of works protected by copyright without permission or payment to the copyright owner. Without those uses, creative and scholarly activities would suffer, and the public would lose out on important new work that builds on the past.

As Section 107 of the Copyright Act of 1976 provides, “fair use of a copyright work . . . is not an infringement of copyright.”² Fair use is the most important limit on copyright monopoly rights. It has been part of US copyright law for more than 170 years. Where it applies, fair use is a right and not a mere privilege. Because copyright law describes fair use in general terms, the fair use doctrine can adjust to evolving circumstances, and the fact that it is asserted procedurally as an affirmative defense should not affect this characterization. As a comparison, for example, freedom of expression is a right that is also asserted as a defense in defamation cases. Rather than following a formula, lawyers and judges assess whether a particular use of copyrighted material is “fair” according to an “equitable rule of reason.” This means taking into account all facts and circumstances to decide

if an unlicensed use of copyrighted material generates social or cultural benefits greater than the cost imposed on the copyright owner.

Judicial decisions on fair use can give practitioners strong positive guidance about how to apply the doctrine. In 1976, Congress inscribed the venerable judge-made rule into Section 107, codifying the familiar “four factors.” It also included a preamble, listing examples of uses that were eligible to be treated as fair use. Notably, some of these (like “criticism, comment, . . . teaching, scholarship, [and] research”) are core activities of many visual arts professionals. There then ensued a decade of generally cautious and even conservative court opinions, calling into question the real utility of the doctrine for those who make and comment on culture.

Since the early 1990s, however, the case law has taken a dramatic turn. By 2002, when the US Supreme Court affirmed the strong connection between fair use and First Amendment freedom of expression in *Eldred v. Ashcroft*, 537 U.S. 186 (2003), the doctrinal landscape already had changed dramatically. In the intervening time, the courts had indicated that a generally critical consideration in evaluating the fair use factors is whether the use can be considered “transformative”—whether it “adds something new, with a further purpose or different character,” as the Supreme Court put it in *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994). Since then, cases have reinforced the notion that for a use to be considered “transformative,” it need not—as, in fact, it usually does not—entail a literal modification or revision of the original material. Instead, it is crucial that it has put that material in a new context where it performs a new function. Thus, the reproduction of an image to illustrate the argument of a scholarly article could qualify, just as could the use of copyrighted material in new art.

Where a use is transformative, the first statutory factor (looking to “purpose and character”) will weigh strongly in favor of fair use even if the new use is “commercial” in character. The second factor (which implicates the nature of the work used) tends to favor transformative uses as well. This factor functions to provide certain imaginative works extra protection from unfair exploitation; however, this concern loses much of its force when they are used for new purposes. Moreover, where the third factor is concerned, courts will measure the appropriateness of the amount of copyrighted material used against the transformative purpose of that use; where visual imagery is concerned, use of an entire work often will qualify, as in *Nunez v. Caribbean Int’l News Corp.*, 235 F.3d 18 (1st Cir. 2000).

And crucially, a transformative use is likely to weigh in favor of fair use under the fourth factor (directed toward the market harm suffered by the copyright holder), because (as increasing numbers of courts have recognized) copyright owners are not entitled to control the “transformative markets” for their works, as exemplified by *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605 (2d Cir. 2006), which involved graphic art reproduced to illustrate a historical narrative. The unlicensed use of reference images (so-called “thumbnails”) in internet search engines has been found to be fair on this basis, an example being *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146 (9th Cir. 2007). But, conversely, the transformativeness test also safeguards rights holders from the invasion of commercially significant markets or potential markets that they are entitled to exploit. When a use merely substitutes for an authorized use in a copyright owner’s core market, for example, the photographic image of a statue chosen and used for its visual appeal on a postage stamp in *Gaylord v. United*

States, 595 F.3d 1364 (Fed. Cir. 2010), it is less likely to be considered fair.

Where a use is deemed nontransformative, the market-harm test of factor four is likely to play a more important role in the analysis. Thus, for example, a textbook author's failure to license summaries of various artists' careers adopted from a proprietary website could weigh against a fair use finding. Alternatively, the reproduction of an "orphan" work that is not being actively exploited might be deemed fair on the same grounds.

As might be expected, these developments in the case law have been questioned by some, who have criticized the transformativeness test as too subjective in its application, too harsh (where the interests of copyright owners are concerned) in effect, and somehow inconsistent with the fact that copyright owners are granted an "exclusive right" to "prepare derivative works" under Section 106(2) of the Copyright Act. Only time may tell how well justified some of these objections are. But, as to the last, it is worth noting that *all* the exclusive rights granted in Section 106 are qualified. It is not clear why the derivative work right should be any less subject to fair use than, for example, the rights of "reproduction," "distribution," or "performance."

Certainly, controversy remains about how fair use should apply to so-called appropriation art, the case law concerning which was discussed at some length in the Issues Report that helped frame the issues addressed in this Code. The particular application of the transformativeness test in *Cariou v. Prince*, 714 F.3d 694 (2d Cir. 2013), involving new works created by defendant's overpainting of photographs taken from plaintiff's book, continues to attract critics as well as defenders.

This Code offers a balanced approach to invoking fair use in this area of visual arts practice, as in others.

In general, there has never been as strong a general judicial consensus about the nature of the fair use doctrine as the one that exists today. In making fair use decisions about issues such as those that confront the visual arts community, judges today generally focus, in effect, on two key analytic questions:

- Did the use “transform” the copyrighted material by using it for a purpose significantly different from that of the original, or did it do no more than provide consumers with a “substitute” for the original?
- Was the material taken appropriate in kind and amount, considering the nature of both the copyrighted work and the use?

These two questions effectively collapse the four factors. The first question contains the first two factors—the purpose of the use and nature of the work used. Thus, for example, the unpublished nature of a work could weigh against fair use if a deceased artist’s copyrighted private letters were being used for gratuitous and sensational effect, but it should have little bearing if the use were for an academic (and thus transformative) purpose. The second question rephrases the third factor, which looks to the quantity and quality of the material used. Both of the key questions touch on the fourth factor, focusing on economic harm the use will cause to the owner’s relevant market. This is because courts have made it clear that substitutional harm is what matters in applying factor four. Thus, if Artist B’s “parodies” of Artist A’s works actually supplant purchases of Artist A’s works, that might result in such harm, but if Artist A’s work, as a result, loses popularity or marketability, that would not.

In other words, if the answer to these two questions is clearly in the affirmative, a court is likely to find a use fair, even if the work is used in its entirety. Where that is the case, a rights holder also might conclude that it ought not to challenge the use.

Court decisions also show that it can be helpful to the fair use argument for the user to explain the new function, purpose, or context of the use. The case law further suggests that the more coherent an account the user can give of how and why it was appropriate to employ the copyrighted work, the easier it is for judges to understand if and whether and why the use would be considered transformative.

The flexibility of fair use can lead users to wish for clearer rules or brighter lines. But the flexibility of fair use is its strength. Courts have emphasized that fair use analysis is fact- and situation-specific. In most cases, however, it is also quite predictable. Moreover, it can be made more so. Even without case law specifically addressing a use, judges and lawyers consider expectations and practice—whether the user acted reasonably and in good faith in light of standards of accepted practice in a particular field. One way of creating better understanding of what fair use permits is, therefore, to document the considered attitudes and best practices of a professional community.

Finally, it is worth noting that legal experts disagree on how much a user's show of good faith adds to a claim of fair use—although, of course, it cannot hurt. Nevertheless, the members of the visual arts community who met to devise the consensus reflected in the Code believed in its importance. Thus, the Code reflects some widely and strongly held community values not tied to language of the Copyright Act, in particular the importance of attribution, and of

safeguarding noncopyright interests such as privacy and cultural sensitivities (including those of indigenous communities).

1. Peter Jaszi wrote this section and is solely responsible for it.
2. § 107. Limitations on exclusive rights: Fair use
 - Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
 1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 2. the nature of the copyrighted work;
 3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 4. the effect of the use upon the potential market for or value of the copyrighted work.
 - The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

About the Contributors

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EDITORS

Bridget Madden is the Associate Director of the Visual Resources Center in the Department of Art History at the University of Chicago. Bridget holds a Master of Science in Library Science from the University of North Carolina at Chapel Hill and has served on the Visual Resources Association's Intellectual Property Rights Committee since 2013.

Alexandra Provo is a Metadata Librarian at New York University. She was the 2015–2016 Kress Fellow in Art Librarianship at Yale University and has been the project manager for two linked open data projects: The Drawings of the Florentine Painters and the Linked Jazz Project. From 2012–2013, she was a photograph cataloger on the “Homeless Paintings of the Italian Renaissance” project at Harvard University's Villa I Tatti. She has an MSLIS from Pratt Institute and a BA in art history from Wesleyan University.

Danielle Reay is an Architecture, Art and Design Library Specialist at New Jersey Institute of Technology. As a librarian for the College of Architecture and Design, she provides research and instruction support as well as oversight of the Littman Library's digital initiatives. She also serves as the library liaison for questions on copyright and intellectual property. She earned her MLIS from Rutgers University and holds an MA in Cinema Studies from NYU.

Anna Simon is the Research and Instruction Librarian at the Kohler Art Library, University of Wisconsin-Madison. Prior to that she was the collections, reference, and instruction librarian for the departments of Art and Art History and Film and Media Studies at Georgetown University. Anna received a dual degree in art history and library science at Indiana University Bloomington. Her master's research examined Fluxus, participatory art, and the Experience Economy through the collaborative online art project Learning to Love You More by Miranda July and Harrell Fletcher. She is keenly interested in cultivating the library as place and transitioning service models from transactional to relational.

Alex Watkins is the Art & Architecture Librarian and an assistant professor at the University of Colorado Boulder. His research focuses on information literacy in art and design education, global access and information privilege in art history, and the relationship between fair use and ethics in art practice. He served as chair of the ARLIS/NA Public Policy Committee from 2015-2016. He earned masters degrees in Library Science and the History of Art & Design from Pratt Institute.

AUTHORS

Amanda Avery serves as liaison to the Center for Transformational

Teaching and Learning (CTTL) at Marywood University. In this area, she strives to help students and faculty incorporate digital tools for research, teaching and lifelong learning, with a focus on critical approaches to information literacy and technology adoption. She emphasizes assessment, feedback and the importance of user experience in developing online learning tools. Amanda is interested in investigating and cultivating digital mindfulness practices in librarianship, research, and her daily life. She holds a BA in Creative Writing from the University of Pittsburgh and a Masters of Library and Information Science from Syracuse University.

Leslie Worrell Christianson holds a Masters Degree in Library and Information Science from the Catholic University of America. As the supervisor of public services, she fosters a physical environment that supports access, creativity, engagement, and the free flow of ideas. As the liaison to the College of Liberal Arts and Sciences, she provides information literacy instruction and reference services. Her research interests include equitable access to information, scholarly communications, and the critical practice of librarianship. She currently serves of the Board of the Pennsylvania Library Association as the Treasurer.

For a number of years, **Cindy Derrenbacker** was a theological librarian at several graduate theological schools in Canada prior to serving as Laurentian University's founding architecture librarian (2013-) for the McEwen School of Architecture in Sudbury, ON. The architecture library and the core collection have grown and developed from an oversized closet integrated in the studio space to a brand new cross-laminated timber facility with seating for more than eighty-five, which opened fall 2016. As an architecture librarian, Cindy has particular interests in teaching and learning, literacy (including visual and adult), and civic engagement.

Nestor Armando Gil is a Cuban-American artist born in 1971 in Jacksonville, Florida. He completed a BA in Humanities at New College of Florida, and an MFA in Studio Art at The University of North Carolina at Chapel Hill. Nestor has been in residence, delivered artist talks, and exhibited work across the United States and internationally. He serves on the faculty of Lafayette College as an Assistant Professor of Art. Nestor lives in Easton, PA with his family.

Laura Dimmit is a Research & Instruction/Arts & Humanities Librarian at the University of Washington Bothell & Cascadia College Campus Library. She has an MA in Creative Writing from the University of Nebraska-Lincoln, and an MSLS from the University of North Carolina at Chapel Hill. Her research interests include information literacy for creative practitioners and peer mentorship for teachers.

Karyn Hinkle has been teaching library research for over ten years with specialized graduate students as well as undergraduates. She earned her MS in Library and Information Science at the Pratt Institute and has worked and taught at the Brooklyn Museum, the Bard Graduate Center, Sarah Lawrence College, Northwestern University, and the University of Kentucky. As a visual art librarian, she loves any chance to encourage students to find, consider, manipulate, and incorporate images into their research.

Jessica Hronchek teaches information literacy in the arts and general education programs at Hope College and provides library support for all art departments on campus. Copyright is a topic of professional interest, and she has taught students copyright best practices in art, computer science, and humanities honors courses. Other areas of

research include information use in dance and peer-assisted learning in undergraduate libraries.

Allan T. Kohl is the Visual Resources Librarian at the Minneapolis College of Art and Design, where he is also responsible for library instruction. He holds his MALS degree from the University of Wisconsin-Madison, his MA in art history from the University of Minnesota, and a Masters in Teaching from Beloit College. He is the former President of the Visual Resources Association, and serves on the VRA's Intellectual Property Rights Committee, with which he has collaborated on a number of major IPR projects including the "Image Collection Guidelines," The Digital Image Rights Computer (or DIRC), and the VRA's Statement on the Fair Use of Images for Teaching, Research, and Study.

Emilee Mathews is the Art & Design Librarian at The Ohio State University. Previously, she was the Research Librarian for Art & Visual Studies at University of California, Irvine from 2013 to 2018. She currently serves on the Strategic Directions committee and was a founding co-editor of the ARLIS/NA publication *Multimedia & Technology Reviews*. She publishes and presents on convergences of arts and digital humanities.

Lindsey Reynolds received her MLIS degree from the University of Alabama in 2011. She is interested in how libraries can be generative spaces for practicing artists as well as serving traditional research communities. She is especially interested in artists who approach publication as part of their practice. Lindsey previously worked at the Birmingham Museum of Art in Alabama, the Whitney Museum of American Art in New York, and with the New York Art Resources Consortium, which consists of the research libraries of three leading

art museums in New York City: the Brooklyn Museum, the Frick Collection, and the Museum of Modern Art. From 2012 to 2017 she was a member of the planning committee for the Contemporary Artist's Book Conference, held in conjunction with Printed Matter's New York Art Book Fair. Lindsey currently works as the Dodd Librarian at the University of Georgia's Lamar Dodd School of Art.

As Visual Resources Curator at the Fashion Institute of Technology, **Molly Schoen** works with History of Art faculty to address their technology, research, and image-related needs. She also leads presentations and workshops relating to visual literacy and copyright issues to FIT students. Prior to her position at FIT, she worked at the University of Michigan's Visual Resources Collections and at the Mott-Warsh Collection in Flint, MI. She has a Masters in Library & Information Science from Wayne State University.

Meredith Wisner has worked at Barnard College for over two years, teaching instruction sessions for the departments of Art, Architecture and First Year Writing, as well as workshops on visual literacy and copyright. Her research interests include tactics for expanding access to information within and outside academia, and the systemic racial and gender biases inherent to copyright law. Prior to her work at Barnard she served as the Assistant Director to Archives and Records at the Brooklyn Navy Yard, where she cut her teeth managing rights for museum and archival collections.

Lijuan Xu is the Associate Director of Research & Instructional Services at Skillman Library, Lafayette College. Her work focuses on collaborating with faculty from across academic departments to develop research assignments and build information literacy into their courses. She has presented and published on topics including

information literacy instruction pedagogy and faculty librarian partnership. The article that describes her co-teaching experience with Professor Nestor Gil appeared in the spring 2018 issue of *Art Documentation*.

PART I

Fair Use & Transformativity

1

Understanding Fair Use Through Concept Mapping

Leslie Worrell Christianson & Amanda Avery

Intended Audience: Upper-division undergraduate or graduate studio art students

Session Length: (2) 50-minute class sessions

Code Section: Making art

ACRL Frames: Information has value, Scholarship as conversation

ABSTRACT

Students will learn about transformative use and ethical appropriation of another artist's work. At the start of class, a concept mapping activity will be presented. Students will break into two groups. One group will concept map the 1980 photograph *Puppies* by Art Rogers. The second group will concept map the 1988 sculpture *String of Puppies* by Jeff Koons. The class will discuss concepts derived from the concept mapping activity and the instructor will introduce how they relate to fair use. The instructor will use the remaining class time to discuss fair use in the visual arts and the ethical use of intellectual property. At the end of the first session, students will be asked to create a work utilizing appropriation and bring it to the next class. Students will present their art alongside the source work and the fellow students will concept map both pieces and discuss the results.

LEARNING OBJECTIVES

- Students will be able to explain the concept of transformative use as an underlying principle in the *Code of Best Practices in Fair Use for the Visual Arts*.
- Students will be able to analyze a work of art in order to interpret its intent.
- Students will be able to evaluate the transformativity of a work of appropriation art.

MATERIALS

- Appropriation Art Assignment Sheet (see [appendix 1](#))

LESSON PLAN

Class one of two

Activity 1: Introduce Concept Mapping (5 minutes)

Procedure: The instructor will define concept mapping in order to prepare for the activity. The lesson will detail how students can use concept mapping to graphically represent concepts and ideas and demonstrate relationships. It will encourage students to draw from their own knowledge of a topic and to ask questions during the process like who, what, where, when, why, and how. The instructor can provide examples or practice the activity with class participation.

Instructor Resources:

- Harris, Charles M., and Shenghua Zha. "Concept Mapping for Critical Thinking: Efficacy, Timing, & Type." *Education* 137, no. 3 (2017): 277-280.
- Simper, Natalie, Richard Reeve, and J. R. Kirby. "Effects of concept mapping on creativity in photo stories." *Creativity Research Journal* 28, no. 1 (2016): 46-51.
- Morton, Mark. *Concept Maps: How Instructors Can Use Them to Support Student Learning (High Definition)* YouTube video, 27:47. Accessed August 8, 2017. <https://youtu.be/Po-aj31WXsM>

Activity 2: Concept Mapping Activity (10 minutes)

Procedure: Students are divided into two groups. One group is given an image of the 1980 photograph *Puppies* by Art Rogers and the second group is given an image of the 1988 sculpture *String of Puppies* by Jeff Koons. Each group is instructed to tape the images on the board,

leaving enough space so students can use concept mapping to write ideas around the images.

Instructor can access images for classroom use at:

- Ames, E. Kenly. “Beyond Rogers v. Koons: A Fair Use Standard for Appropriation.”
- *Columbia Law Review* 93, no. 6 (1993): 1473–1526. (Both images.) Silverman, Ruth. *Dog days: A Book of Days*. San Francisco: Chronicle Books, 1989.
- Koons, Jeff. “Artwork: String of Puppies.” Accessed August 8, 2017. <http://www.jeffkoons.com/artwork/banality/string-puppies>.

Activity 3: Review Concept Mapping Activity (10 minutes)

Procedure: The instructor will initiate a conversation about the results of the concept mapping activities and discuss similarities and differences between the two “mapped” images.

Did the students recognize Koons’s sculpture as a parody on Rogers’s work? If you only saw Koons’s work without seeing Rogers’s, would you know it was a parody? Do the concepts surrounding each image, as a whole, tell different messages? How does seeing the two works together change your interpretation of each? The instructor will discuss in greater depth the court case *Rogers v. Koons* 960 F.2d 301 (2d Cir. 1992) and the ruling.

Resources:

- *Rogers v. Koons*, 960 F.2d 301 (1992).
<https://h2o.law.harvard.edu/cases/5190>.

Activity 4: Fair Use in the Visual Arts (20 minutes)

Procedure: The instructor will open a lecture on fair use referencing parody as one activity that is considered fair use and emphasize that parody is transformative because its intent is different from that of the original artwork. The other factors that are considered when determining fair use will be discussed with an emphasis on the issue of a work being transformative in concept regardless of how much or how little is taken from another artist. The instructor will also discuss how transformative use as a fair use defense has changed since the idea was introduced in the early 1990s and how the ruling in the *Rogers v. Koons* case might be different if it was litigated today. The *CAA Code of Best Practices in Fair Use for the Visual Arts* will be introduced to the students as a guide for Appropriation Art within the discipline.

Instructor Resources:

- Bodick, Noelle. “A Fine Line: The Ins and Outs of Copyright Law.” *Blouin ArtInfo*, July 29, 2015, <http://www.blouinartinfo.com/news/story/1208105/a-fine-line-the-ins-and-outs-of-copyright-law>
- College Art Association. “Code of Best Practices in Fair Use for the Visual Arts.”
- PowerPoint Presentation. Accessed August 8, 2017. <http://www.collegeart.org/pdf/fair-use/fair-use-power-point.Pptx>.
- Grant, Daniel. “Freedom of Expression? Fair Use? Thank These Artists You’ve Probably Never Heard Of.” *Observer*, December 9, 2016, <http://observer.com/2016/12/freedom-of-expression-fair-use-thank-these-artists-youve-probably-never-heard-of/>

- Harvard Law School. “Image Rights,” *The Artist’s Rights*. Accessed August 8, 2017. http://www.law.harvard.edu/faculty/martin/art_law/image_rights.htm.
- Mauk, Ben. “Who Owns This Image?” *The New Yorker*, February 12, 2014, <http://www.newyorker.com/business/currency/who-owns-this-image>.
- Prowda, Judith. *15 Minutes on Copyright for Visual Artists on Vimeo*, 13:30. Accessed August 8, 2017. <https://vimeo.com/91239986>.
- U.S. Copyright Office. 17 U.S. Code § 107. *Limitations On Exclusive Rights: Fair Use*. <https://www.copyright.gov/title17/92chap1.html#107>.

Activity 5: Appropriation Art Homework Assignment (5 minutes)

Procedure: Distribute the homework assignment handout and briefly explain objectives

Resources Handout: appropriation art assignment (included in appendix)

Class two of two

Activity 1: Student Presentations of Appropriation Art (5 minutes)

Procedure: The instructor will model how to both present and defend an example work. Briefly review the steps involved in concept mapping. A review will allow the instructor to gauge student knowledge and provide direction and feedback for Activity 2.

Activity 2: Student Art Presentations (40 minutes)

Procedure: Students present their appropriation art work with the

original piece by taping it to a wall or board. Individual students will write ideas on sticky notes or white board to concept map the presenting student's work. The presenter will defend the transformative use of their work based on the previous discussions and examples of fair use and ethical appropriation.

Instructor Resources: White board or sticky notes for concept map

Activity 3: Wrap-up discussion, "exit ticket" survey (5 minutes)

Procedure: Distribute a short (3-question), culminating survey to students in the last 5 minutes of class which they will hand-in as their "exit ticket" to leave the session. This can be ungraded/anonymous, and will provide the instructor and/or co-teacher with general data on the class's knowledge of transformative art best practices, as well as feedback on lesson effectiveness.

Resources: Wrap-up Survey (included in appendix)

Assessment: Instructors will measure student learning through formative assessment. After the lesson and discussion, the second concept mapping session of student work will allow the instructor to assess the success of the lesson based on student preparedness, work samples, and participation in the discussion. Through observation of the students' artwork and class discussion, instructors can identify any gaps in student comprehension of transformative use, fair use, and ethical appropriation.

REFLECTION

This lesson plan grew out of my work as the copyright librarian and liaison to the Art Department in collaboration with Amanda Avery, the Librarian for the Center for Transformational Teaching and Learning (CTTL). I have been addressing issues regarding copy-

right for the past five years during instruction across all disciplines. I have also published on the work being done by academic librarians to address copyright on campus.

Three years ago, I became the liaison to the art department and was asked to present to a graphic design class. The instructor was concerned with students' excessive "borrowing" of others' creative work and a lack of understanding of copyright law. Students also had a difficult time understanding how appropriation art did not violate copyright law and the exceptions made for "transformative use." Over the course of the past three years, the ACRL *Framework for Information Literacy for Higher Education* was introduced and I adapted the sessions for the graphic design students to address frames rather than standards. The CAA *Code of Best Practices in Fair Use for the Visual Arts* was also released during that time and became an important resource for the students on how to navigate fair use.

Although there are prescribed factors that are considered when determining fair use, what has made it an important component to the advancement of the arts and sciences is the role of critical thinking in determining lawful use of intellectual property. It also allows for changes in how creative work is made and how it impacts all segments of society. For something to be considered transformative it needs to possess a new aesthetic, expression, or meaning. In considering this, it became apparent that this lesson would be more impactful if taught through the lens of critical information literacy.

I approached Amanda to collaborate in developing the lesson plan to include active participation from the students in order for them to critically engage in the learning process. Amanda was recently appointed the liaison to the newly created department CTTL. One

of the goals of CTTL is to “assist in the development, delivery, and continuous improvement of high quality learning experiences in all modalities; and build communities of practice that advance teaching and learning.” After a few discussions, the process of concept mapping came to the forefront as an activity during the lesson that would engage the visual learner in critical thinking. The students’ direct experience of the art and prior knowledge was an important part of participating in the lesson and would ultimately be integrated into new knowledge. The lesson also required that the students work collaboratively to make decisions based on the information provided, thus actively participating in the process of addressing ethical concerns surrounding the value of creative work. Although this lesson is designed for two 50-minute class sessions, it would still meet the learning objectives if the instructor was only able to present the first 50-minute session. The objectives of this lesson can be built upon with further exploration of these issues so the students can fully engage in their community of practice as professional artists.

2

Copyright, Fair Use, and Art Making

Lijuan Xu and Nestor Gil

Intended Audience: Lower-division undergraduates including studio art majors and minors who have taken at least one studio art course. No prior knowledge of copyright and fair use is necessary.

Session Length: 60–75 minutes

Code Section: Making art

ABSTRACT

Developed as part of a teaching collaboration between an art professor and a librarian at a liberal arts college, this lesson is designed for an intermediate (200) level studio course. The class begins with a student discussion in response to an NPR interview with James Boyle, author of the comic book *Bound by Law*. We follow up with an overview and a discussion of copyright, the four factors governing fair use, and the CAA *Code of Best Practices in Fair Use for the Visual Arts*, after which we introduce the *Cariou v. Prince* case and ask students to argue on behalf of either artist. After the debate, students reflect on their own art-making experiences and discuss if their past practices constitute fair use and how those practices align with the best practices outlined in the Code. After the session, students create an artwork that incorporates copyrighted material in a transformative manner.

LEARNING OBJECTIVES

Upon successful completion of this unit:

- Students will be able to define what fair use is in order to invoke it appropriately in art-making.
- Students will consult the Code to assess if a particular use of copyrighted material is fair use and if it conforms to the limitations specified in the Code.
- Students will be able to employ fair use in their own artistic practice in order to create artworks that build on preexisting works, engage with contemporary culture, or provide artistic, political, or social commentary.
- When incorporating copyrighted material, students will be able to

conduct a fair use analysis and make a reasonable determination as to whether the use is appropriate.

- Conversely, students will be able to explain why the use of a copyrighted work is acceptable.

MATERIALS

- Flip chart and markers
- Presentation (see [appendix 2](#))

LESSON PLAN

Before class activity

- Students listen to a seventeen-minute NPR interview with James Boyle, one of the authors of the comic book *Bound by Law*, which explores fair use and the permission seeking culture in documentary filmmaking.¹
- Each student is expected to come up with two to three questions related to the interview and bring them to class.

Introduction of the session goals and format (1-2 minutes)

Discussion prompts to jumpstart the conversation about the NPR interview (5-6 minutes)

- What do you find interesting, intriguing, or puzzling about the interview?
- What are some of the questions you have?
- How does the interview relate to your personal experience with uses of copyrighted material?
- Does copyright dampen artistic creation?

Basics of copyright (3-5 minutes)

- When does a work become copyrighted? How long is it under copyright protection?
- What rights does the copyright owner have?
- What is public domain? What are the implications?

Overview of fair use (8-10 minutes)

- What is fair use?
 - The four factors governing fair use
- Why is fair use important to artistic creation?
 - Does original work exist?
 - Authenticity vs. originality
 - The 2014 CAA report: *Copyright, Permissions and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities*
 - 70% of respondents indicate that they use copyrighted material in creating their own work
 - What is your experience using copyrighted material in your own artworks?

Discussion of the CAA Code (5-6 minutes)

- Why a code?
 - 1/3 of the visual arts community has abandoned work due to copyright concerns (2014 CAA report)
- What is in the Code?

- Section “Three: Making Art”
 - Description
 - Principle
 - Limitations

Student debate on the *Cariou v. Prince* case

- Brief introduction to the case (2 minutes)
- Divide students into two groups, one representing Cariou and the other Prince.
 - Students discuss the case in groups and write down their reasoning on a Flipchart (5–6 minutes)
 - Does Prince’s use constitute fair use? Why or why not?
 - One representative from each group presents their argument to the class and each group answers questions from the other group after its presentation (8–10 minutes)
- Share with students the court rulings from the original trial and the appeal (Prince lost the original trial but won the appeal.) Solicit feedback and questions from students (8–10 minutes).
 - What is your personal opinion about the case had you not been assigned to a particular group? Why?
 - Could Prince have strengthened his fair use argument had he used fewer images or partial images of Cariou’s photos?
 - Would it have helped if Prince had explained his artistic objective of using Cariou’s photos?
 - Would giving proper credit to Cariou make a difference?

Student reflections on their own art-making and fair use experience (6-8 minutes)

- How have you used copyrighted material in your own artwork?
- Does it constitute fair use? Would you consider it best practice?
- What would you have done differently? How might it have affected your work?

Conclusion and assignment (5 minutes)

- Summarize the class discussions and address any last minute questions students may have.
- Assign the studio project
 - Create an artwork that incorporates copyrighted material in a transformative manner.
 - Write a rationale justifying your use of the copyrighted materials using the CAA
 - Present your work to the class and explain your use of the copyrighted material.

REFLECTION

This session is part of an information literacy collaboration between an art professor and a librarian on a two-hundred level studio art course. Prompted by the professor's concern that studio art students often regard creative work as merely about self-expression and making pretty images or forms, we developed a series of research and studio projects through which students explore the connection between research and art-making.² This session occurs after students have finished their first studio project and are doing research for their second one.

To keep students motivated and engaged, we design and co-teach the session following John Keller's ARCS (Attention, Relevance, Confidence, and Success) model and employ active learning techniques.³ The brief interview that students listen to before the session helps pique their interest. The debate gives students an opportunity to verbalize what we have discussed in class and apply it to their argument. It also highlights what students are still confused about and what we need to clarify. The session's relevance is made even clearer by connecting it to the students' and professor's experience.

This class typically has ten to twelve students that can be easily divided into two groups. For bigger classes, one could have a few groups with five to six students in each. The groups that are not presenting can chime in and ask questions during the debate. The participation or co-leadership of a practicing artist—in this case, the professor—is essential. Together, the professor and the librarian can challenge student assumptions and offer different perspectives. In this class, students are always interested in the librarian's take as a non-artist on the *Cariou v. Prince* case.

When we first taught the session in spring 2014, we discussed a few court cases before introducing the debate exercise. Students found them overwhelming. Since then we have focused only on the *Cariou v. Prince* case, which has worked much better. Due to the deep concern many students expressed about the possibility of others appropriating their artwork, we now spend more time discussing the importance of fair use and examining the relationship between authenticity and originality.

Students are often nervous about using copyrighted material after listening to the interview.⁴ This feeling is heightened when they learn

that many artists have abandoned work due to copyright concerns.⁵ During the first session, we found it challenging to give students clear and concrete guidance. The Code now provides students, faculty, and librarians much needed clarity. We also tried introducing the Code after the debate, but noticed student confusion and their need for guidance. In subsequent semesters, we will discuss the Code before the debate to give students an opportunity to interpret and apply the Code in class. To help them employ fair use best practices in their own art-making, we will assign a project that requires students to incorporate copyrighted material in a transformative manner. The project will also further strengthen the link between research and art-making, a key information literacy goal for the course.

REFERENCES

1. James Boyle, interview by David Crabtree, *The State of Things*, 91.5FM WUNC, April 26, 2006.
2. Lijuan Xu and Nestor Gil, "Librarians as Co-teachers and Curators: Integrating Information Literacy in a Studio Art Course at a Liberal Arts College," *Art Documentation* 36, no.1 (Spring 2017): 122-136.
3. Trudi E. Jacobson and Lijuan Xu, *Motivating Students in Information Literacy Classes* (New York: Neal-Schuman, 2004), 7-9, 65-72.
4. James Boyle, interview by David Crabtree.
5. Patricia Aufderheide et al., "Copyright, Permission, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities: An Issues Report," *College Art Association*, February 2014, <http://www.collegeart.org/pdf/FairUseIssuesReport.pdf>.

PART II

Fair Use & Zine Making

3

Radical Appropriation in Zine Making

Emilee Mathews

Audience: Lower or upper division undergraduates in the humanities

Session Length: 45 minutes to 1.5 hours, with optional follow-up sessions

Code Section: Making art

ACRL Frames: Scholarship as conversation, Authority is constructed and contextual

ABSTRACT

Zine making, in which appropriation is a common technique, is a powerful tool for identity formation and community building outside of mainstream culture and media. In this lesson plan, students critically engage the zine's conceptual underpinnings and material production in order to reflect on their own nascent zine making practice. What meanings are created by appropriating another's work, particularly that of another zinester, and does the meaning change when the student's work is accessioned into the same archive in which they found it?

LEARNING OBJECTIVES

- Students will articulate general strategies and affordances of appropriation in the context of zine culture
- Students will articulate their own ethical position on appropriation and defend their stance through their own zine creation
- Students will be introduced to the *CAA Code of Best Practices in Fair Use for the Visual Arts*, and how it would bolster their decisions to appropriate from other cultural producers

MATERIALS

- **Zines.** This will take time to choose which ones you want to highlight in a given class, provided your library already collects them. If not, going to local zinefests and trading, bartering, or purchasing can be a good way to collect; otherwise, check out this list of stores that sell zines:

<http://www.stolensharpierrevolution.org/stores-that-sell-zines/>

Zines often employ found objects and quotations from popular

culture; if discussing appropriation in your lesson, make sure to have a few examples of these.

- **Paper and Pencils.** Part of the lesson plan is to have students make their own zines using a simple folding and cutting method, and to write/draw on these during the session.
- How to make a simple zine: <http://experimentwithnature.com/03-found/experiment-with-paper-how-to-make-a-one-page-zine/#.WYoIdmfmXzk>

LESSON PLAN

Learning

- Welcome and introductions. Provide brief overview of what they will be doing during the session and what they will get out of it. Provide paper and scissors and teach the students how to make their own simple zine form to take notes in.
- Introduce zines: using the zines you have chosen, demonstrate some of the characteristics of zines, zine making, and zine production. Discuss a couple examples of zines, relating to the course themes, and why you chose it. Discuss why the zines are in the library/archive and how that fits in with the overall library mission.

Looking

- Depending on the size of the class and the amount of zines you chose, divide students into small groups of 4 or so and have them look closely at the zines and prepare to report back to the class with the following discussion questions in mind:

- What is the zine about? How does it communicate that meaning in form and content?
- What themes do you see that relate to the concepts discussed in your class? Optional: relate to recent class readings, discussions, or assignments.
- How does the zinemaker comment and critique on their topic? If you were to create a zine, what techniques and topics would you be interested in trying out?
- What types of borrowed imagery and quoting do you see in the zines? How would you incorporate these in your own work?
- Time the portion of the class so that the small groups each have a certain amount of time to look at a group of zines; rotate the groups through so that they each have time to look at the materials on hand closely and with each other.

Talking

- Open the floor back up for discussion. Have each group present on their findings.

Making

- Ask students to use their zine forms to take notes, copy, sketch, or otherwise document ideas gathered from the zines they have looked at, saving about a paragraph's worth of space for reflection at the end of class.

Reflecting

- Ask students to reflect on quoting and copying practices. Do their actions take away from the original author's intent or bolster their position? What does it mean to participate in a community of

shared approaches and goals? Ask the students to imagine that their work is acquired and put in the same archive. Does that change how they feel about appropriating others' work when they themselves may be the on the other side of that relationship, as the ones whose work is being appropriated? Is their decision affected by the thought of how collecting these works together in the same archive inform a more bird's-eye view of the cultural phenomena to which each work is responding?

- Introduce Section 3 of the *Code of Best Practices in Fair Use for the Visual Arts*, and highlight the section about appropriation. Do they believe their intended use is protected by the Code, or could be strengthened?
- Have students write up their thoughts on the remaining blank portion of their zines.

ASSESSMENT

Formative

- Group presentations based on discussion content.
- Collect the zines and analyze their content.

Summative

- If possible, consider acquiring copies for the library.
- If students will eventually be creating their own zine for the class, attend final presentations where students explain the zine's content and their process.

REFLECTION

Students often are unfamiliar with zines. But like many primary sources, the materials speak for themselves. Cheaply produced, the

zines' quotidian aesthetic has its own attraction for students. Furthermore, the zines' representation of the ability to express oneself outside of dominant norms evokes curiosity and empathy from students.

My experience teaching this lesson plan was deeply informed by the students in the classes I worked with—classes in gender studies and African American studies with a visual culture focus—and the interests and passions of the faculty who was teaching the class. These courses were lower and upper division, and some of them did not have a preponderance of majors in these disciplinary areas. But these kinds of disciplines tend to attract students who are passionate and interested in exploring subcultures and alternate means of expression outside of mass culture, which is perfect for zines. Furthermore, working with students in humanities has been interesting, as by and large they have less training and experience in artistic creation, but are interested in and open to it. But this lesson plan could be easily modified for studio art courses.

The zine's authorship and distribution model calls up issues such as representation, alterity, social justice, and community building, whether the content is political commentary, music reviews, or a recipe book. Both in content and in structure, this zine lesson plan fits nicely with approaches in critical pedagogy and feminist pedagogy, in empowering students to be cultural producers. Inspired by visual culture and primary source instruction, it brings the relationship between looking and making together, learning from others' communication techniques and experiences.

Issues of appropriation are a natural fit as well. In the larger art world, appropriation is a broader approach to exploring authorship and originality; sometimes in response to issues such as surveillance;

sometimes, a way to reenact or emphasize. Iconic examples of appropriation have powerful artists using advertising and pop culture (Jeff Koons); or using imagery gathered from ordinary people (Richard Prince's Instagram paintings), creating a power dynamic that uses the creative labor of others to further reify their own reputations. But a distinctly different phenomenon emerges when ordinary people appropriate from other ordinary people, and a nuanced information ethics and care emerges from that articulation of values.

Finally, this lesson plan allows the library to communicate its value to students beyond a place to study and borrow textbooks. Issues like intellectual freedom, information privacy and ethics, sharing resources for the benefit of all, and documenting history outside of hegemonic voices all come to the fore.

If you are considering collecting zines, or evaluating their location and access, remember that you can highlight different aspects of the library's mission and demonstrate your importance. Ours are in the archive, a space that represents enduring value across society, and I have noticed that students are impressed and excited by seeing fellow students' work in the archives, and thrilled to have their own work included. The classes were critically informed by the archive's openness to collecting student work and their commitment to the idea of the community archive.

4

Zines, Appropriation, and the Art Library as Studio Space

Lindsey Reynolds

Intended Audience: Upper-division undergraduate course for studio art students focusing on photography

Session Lengths:

- 1 hour long introductory library instruction session (with optional 30 minute demo)
- 1 hour long fair-use instruction session
- 3 three-hour long open library/studio sessions
- 1 three-hour final critique

Code Section: Making Art

ABSTRACT

This studio art course was designed to introduce students to historical references and contemporary trends in photography publications. Fair use instruction was embedded informally throughout the course via readings and instructor feedback during open studio sessions, combined with two formal instruction sessions. The formal instruction sessions used the *CAA Code of Best Practices in Fair Use for the Visual Arts* and several fair use legal case studies involving practicing artists. The library was used for instruction sessions and as an open studio by the students. A semester-long assignment to create a zine in an edition of 10 served as their final project. Most of the students used appropriated images/text scanned from books in the library; some used photographs they had taken of works in the museum's collection. The librarian participated in their final critique, which was held in the museum library. At the end of the course, a copy of each student's zine was accessioned into the library's artists' book collection.

LEARNING OBJECTIVES

- Students will know how to contact museum libraries and make appointments to visit them
- Students will be able to define appropriation and identify some prominent artists who use it in their work
- Students will be able to defend their own use of appropriation in their studio practice

MATERIALS

- "Copyright Infringement v. Fair Use" PowerPoint Presentation (see [appendix 3](#))

- 1-page zine template
- Zine collection submission form

LESSON PLAN

Day 1

Introductions & Library Tour (20 minutes)

Students, given directions by their professor, meet at the museum library. It may be the first visit for many. Introduce students to the librarian, tour the physical library space and explain hours and how to make appointments.

Zine introduction (20 minutes)

Introduce semester-long zine project to students—explain what a zine is, why it is something a library would want to collect, and show examples from the library's collection. Point out differences in size, shape, binding, and paper. Explain submission process and collection development policy of library's zine collection if one exists. Give students a copy of this policy and any relevant submission/donation forms to take home with them.

Be sure to discuss elements of publications like ISBN numbers, copyright statements, and bibliographies. Show examples of books that don't always follow these formats such as artists' books and exhibition catalogs. Explain the importance of these elements and discuss autonomy of zine authors to include or not include them and why they as artists may or may not want to include them in their final projects.

Zine review (20 minutes)

Provide time for students to flip through zines individually and in groups. Ask students which ones they like or don't like and why.

Answer questions informally as they come up to encourage participation.

Optional Demo (30 minutes)

Show students a one page zine template, demonstrate how to cut and fold it. Provide materials for students to try cutting and folding themselves.

Day 2: Copyright Infringement v. Fair Use PowerPoint Presentation

Introduction: Slides 1-3 (15 minutes)

Ask: Who uses appropriation in their work? Who knows what appropriation means?

Show 2 slides with definitions. Discuss nuance of this term, especially in relation to art making but also to social media, internet culture: memes, etc.

Ask again: Who uses appropriation in their work? See if the students' answers change.

Note that this presentation will be made available on students' e-learning class site.

CAA Code: Slide 4 (10 minutes)

Introduce the Code to students. Read "Three: Making Art" aloud to them or have a student volunteer to read it aloud (unless this reading has been assigned as a previous homework assignment) and discuss the limitations—what is their significance to the students? Why do they differ in opinion?

Court Cases: Slides 5–8 (30 minutes)

Discuss various art world court cases using slide examples. Each slide shows an image of the appropriated work in question with the source material. The presenter notes field is populated with background on each case to be used to guide discussion. It is important to discuss the cases in chronological order to be clear that some cases have been superseded—this helps to illustrate how opinions about fair use have changed over time.

Before discussing each case, ask the students if they think the art-works falls under fair use based on the images on the slides. Have them discuss why or why not. Encourage students to use the Code as a framework for their analysis.

Wrap up (5 minutes)

Leave time to answer any questions that the students have.

Optional Section

If time permits for a second session, asking students to role play defending/prosecuting a theoretical case involving their own appropriation works could be an effective active learning tool. Students could work in teams or pairs, taking turns defending their own works against a peer posing as a prosecutor who would be arguing that the source of the appropriated imagery was wronged by the student defender's use of it. They would then switch roles. Each pair or team would have the added benefit of conducting this play in front of a live audience (the rest of the class and the librarian). The librarian can be the judge. While students are asked to engage in this type of questioning and defense in the final critique, practicing the activity in a less formal setting will allow students to hone their approach.

Days 3-5

Open Studio (3 hours)

Students meet in the library for the entirety of the class period, working independently on their zines (hopefully utilizing library materials). Librarian and professor will be available to answer questions and to meet with students individually to discuss the direction of their project.

Day 6

Final Critique (3 hours)

Professor leads final critique with librarian's participation. Students are asked to identify appropriation in their own and each other's work and to defend their use of it where applicable. Note that appropriation was not a mandatory part of the assignment and not all students used this strategy in their final projects; given a chance to repeat this course I would encourage the professor to make appropriation mandatory in order to engage all of the students in thinking about fair use in their own studio practice and to provide continuity in the final critique. At the end of critique, students submit one copy of each of their zines to the library's zine collection, filling out any necessary paperwork at this time.

REFLECTION

This course came out of a small conversation group that developed between myself (museum librarian), Wassan Al-Khudhairi, the contemporary art curator at my institution, and Jared Ragland, a photographer and instructor at the local university. We met to discuss art happenings in Birmingham, goings-on at each of our institutions, and ways to collaborate.

Jared had developed a course which would focus on investigating methods of image sequencing, editing, and presentation of photographic and lens-based media across print, exhibition, and online outlets. He knew that I had a burgeoning zine collection and interest in artists' books, so he asked if he could bring the students to the museum library and if I would be interested in leading instruction sessions with a focus on fair use and artists' publications. As we began planning the course it became apparent that more than one library session would be helpful, and my offer to use the library as a studio space for the final zine project was readily accepted. As we developed the final project I offered to accession the zines into the library's collection as an exciting perk for active participation by the students. Although I am part of the museum's curatorial team and an affiliate faculty within the university's art school, this was the first studio art course taught in collaboration between the art museum and the university.

Hosting the class in the museum library felt like a smart move. It increased students' awareness of the resource, and having studio time there helped to break down access barriers and perceived formality that museum libraries often carry. Holding the final critique in the library with the librarian's participation further increased my credibility with the students. My participation in the final critique was not limited to discussing appropriation and fair use only, although I tried to be sure to participate in any fair use conversation that arose, especially if students were interpreting it incorrectly or if they seemed to be self-censoring. I also used my knowledge about contemporary art to identify artists working in a similar vein and to discuss exhibitions at museums I had seen throughout my tenure in museum libraries. The students seemed to be especially interested in hearing about how curators conduct research, and the exhibition design process.

One of the best outcomes of accessioning the zines from the class into the library's collection was the sense of ownership over the collection and the library space it afforded the students. I believe having a title of theirs in the collection did this in a way that no amount of outreach could.

The professor assigned readings throughout the course, and looking back I would have inserted some selections from White Chapel's *Documents of Contemporary Art Series*, specifically from the volume titled "Appropriation" for students to read before the fair use instruction session in order to increase their conceptual understanding of appropriation as a strategy for contemporary art making.

I would also suggest adding instruction time to go over citation formats with the students. I assumed that they were familiar with this but not all of them were, as was evident in their final projects.

Since the course was taught over the summer, students met in the library once per week over the course of two months. This lesson could also be implemented as a succinct unit within a longer course with sessions run consecutively.

PART III

Fair Use & Ethics

5

Copyright and Fair Use for Graduating Studio Art Majors

Jessica Hronchek

Intended Audience: This lesson is designed for upper-level undergraduate studio art majors. Particularly, it was incorporated into a seminar for seniors participating in the capstone art show.

Session Length: This session takes about 90 to 120 minutes, depending on the length of discussions. It would also be possible to shorten it by dividing the session between two days and having students research their case studies outside of class.

Code Section: Making art

ABSTRACT

This lesson was designed as a part of a seminar for art majors preparing work for their Senior Show and is intended to inform students preparing to begin careers as practicing artists or art educators. The lesson incorporates a short lecture on copyright and fair use, a class discussion about copyright and artistic practice based on preparatory readings, an in-class research exercise of art copyright case studies, and student presentations on their findings and opinions. In addition to raising awareness of copyright and the *CAA Code of Best Practices in Fair Use for the Visual Arts*, this lesson is particularly apt for helping students grapple with the ethical complexities surrounding the artistic use of other artists' work.

LEARNING OBJECTIVES

Studio Art Majors will:

- Describe the legal rights surrounding their art.
- Identify how fair use impacts their practice.
- Examine the legal and ethical complexities that surround artists' perspectives on these issues, using case studies from the news.

MATERIALS

- The instructor will need a computer and projector for the presentation, and students will need at least one computer/laptop for each pair of students if the case study research is taking place in class.
- Lecture and Discussion Slides (Artist Copyright Slides), Art Copyright Handout, In-Class Copyright Case Studies (see [appendix 4](#))

LESSON PLAN

Homework

Prior to class, students are assigned to read the “Introduction” (pgs. 5-6) and “Three: Making Art” (pg. 11) of the Code. They are also given a short article that highlights artists’ perspectives on copyright and art. Different articles can be used, but one recent example is:

- Grant, Daniel. “Can Inspiration Overstep Its Bounds?” *Crafts Report* 40 no. 461 (2014): 32-35. Accessed June 21 2017
<http://www.firemountaingems.com/resources/jewelry-making-articles/e8am>

Instructors may select more up-to-date articles, but try to find ones that include artists’ emotional, moral, and/or legal reactions to particular cases.

Lecture (15-20 min)

The class session begins with a brief lecture on copyright law and fair use as it impacts artists. Because the learning objectives include broader ethical considerations, it also mentions the Artists’ Moral Rights Act. (See attached slides for more detail on lecture content.) In order to make the topic feel more practical to practicing artists, use art examples pulled from the teaching faculty member’s body of work or other art recognizable to the students. The students are provided with a handout that summarizes the basics of copyright and fair use and also includes an excerpt from the Code.

Discussion (30 min)

The class then turns to a discussion of the cases mentioned in the assigned article, asking students for their reactions and the ways the

CAA Best Practices impact their interpretations. Slides remind students of the works under discussion. Possible guiding questions to use:

- Who do you agree with? Lauren Clay or the David Smith Estate? Is it enough change? How do you decide?
- What about Prince and Cariou? The courts sided with Prince, but not in a way that made it particularly clear where the line is drawn for transformative use. Do you think there is a black and white line for “transformation”?
- David Dodde—Is this work, as the Calder Foundation claims, an “abomination”? Did this infringe on an artist’s moral rights? (This example has particular resonance because Hope College is in West Michigan. A more nationally known example could be Arturo di Modica’s *Charging Bull* vs. State Street Global Advisor’s *Fearless Girl*.)
- Look again at the the Code section “Three: Making Art”. How does this influence your interpretation?
- Does it matter if one artist is more successful than another? Is there a power differential?
- Though not included in the article, I also like to cite the example of Patricia Caulfield and Andy Warhol (see slides). This allows for discussion in the following areas:
 - Do certain genres of art get more protection in copyright cases?
 - Do gender, race, and class have a part to play in these broader discussions?

- What do you think is an ethical engagement with another artist's work vs a legal one? Does it matter?

Student Research (15-20 min)

Divide the class into groups of 2-3 students and pass out one copy of the "Copyright Case Studies" handout to each group. Assign each group one of the legal cases listed on the handout. (The list of cases can be expanded and updated as needed.) Tell the groups to do online research to learn about their assigned cases. In their groups, students should discuss the cases and answer the exploratory questions on the handout. Tell them to be prepared to present their findings and thoughts to the rest of the class.

Student Presentations (30-45 min)

Student groups take turns giving informal presentations on what they learned and their group's discussion. They share any example images they found that highlight the issues, summarize the key points of the disagreement and/or trial, and give the results. They also share their group's perspectives on the case and which side they agreed with more. The librarian and faculty instructor can step in with guiding questions or observations as needed.

REFLECTION

This session was created when an instructor reached out to me for assistance in teaching a section on copyright, which was a mandatory part of the senior show seminar. We planned the session at the end of the semester when the students were wrapping up their preparation for the show, which allowed us a generous amount of time in which to engage the topic as well as more flexibility to assign outside readings, which is not always the case for information literacy one-shot sessions. This lesson plan is intentionally structured around

active learning exercises, and, for this reason, depends a lot on student participation. Class dynamics will impact the level of success of these activities. Because the students in this particular course worked so closely together all semester, I think this facilitated more productive and organic discussion.

The outside reading chosen may have an impact on the students' understandings of how much freedom comes under fair use. In an earlier version of the lesson I had utilized a historical article that I considered a very strong reading because it highlighted artists' perspectives, included several important historic copyright cases, and hinted at the broader ethical and social issues. As class discussion progressed though, I realized that it struck a more conservative tone on how artists may use other artists' works. This may have led the students to adopt a more hesitant stance on fair use than I and the instructor intended. For later iterations, I selected a more contemporary article, that, while not mentioning the Code, was more reflective of the current legal understanding of Fair Use.

REFERENCES

1. Gay Morris. "When Artists Use Photographs: Is it Fair Use, Legitimate Transformation or Rip-off?" ARTnews, January 1981, 102-106.

6

Economics, Morality, and Artistic Rights

Laura Dimmit

Intended Audience: Lower-division undergraduate studio art students

Session Length: 60-90 minutes

Code Section: Making art

ACRL Frame: Scholarship as conversation

ABSTRACT

The first section of the lesson introduces students to the vocabulary of artistic permissions and rights management—public domain, open licenses, traditional all-rights-reserved copyright, and fair use. This baseline knowledge sets up the second section of the lesson, focused around two contemporary case studies. For this class, students will be introduced to the dispute between the creators of two sculptures occupying the same New York City park, “Charging Bull” and “Fearless Girl.” They will then examine issues of attribution and compensation through a case of uncredited Twitter content being reformatted and sold. Working in small groups, students are prompted to examine the tensions between artistic intent and public interpretation, as well as the case for either fair use or copyright infringement.

LEARNING OBJECTIVES

Students will:

- Articulate differences between public domain, open licenses, and all-rights-reserved copyright.
- Critically engage with contemporary case studies related to fair use and artistic ownership.
- Reflect on “quotation” and other referential decisions in their own creative practices.

MATERIALS

- Presentation (see [appendix 5](#))

Suggested readings for Case Study #1:

- Fallis, G. (2017). [seriously, the guy has a point](#). (Blog post.)

- Criado-Perez, C. (2017). On Fearless Girl, women & public art; or, no, seriously, the guy does not have a point. (Blog post.)

Suggested readings for Case Study #2:

- Safronova, V. (2017). After a Frank Ocean Set, a Week of Big Sales and Copyright Questions. *New York Times*.
- Bobb, B. (2017). Brandon Male Wants You to KNow Why He Tweeted the Words worn by Frank Ocean. *Vogue Magazine*.

LESSON PLAN

Prior to the session: coordinate with the instructor so that students can bring a completed visual project from earlier in the quarter/semester.

Begin class with a think/pair/share prompt. (About 5 minutes.) Invite students to think about a time when their understanding or opinion of an event, issue, or concept changed after they encountered a new visual representation. What was it about the visual that altered or influenced their understanding?

Use student responses to introduce the broader themes of the class session: the tensions between artistic intent and public interpretation, and the extent of artistic rights outlined by copyright and fair use.

Ask students to generate a list of what they already know about copyright. (About 5 minutes.) Use a whiteboard or a shared Google document. This list of facts, definitions, and possibly misconceptions can guide the next portion of the lesson.

Using either the provided slides or your own materials, guide students through the following concepts: (About 20 minutes.)

- The spectrum of author permissions: public domain, open licenses, and all-rights-reserved copyright.
 - Discussion question: Why would you want to retain copyright for something you created?
- Transformative Use
 - Introduce the “limitations” outlined in section “Three: Making Art” of the Code. Frame these limitations as all relating to the idea of transformation.
 - “Four factors” of fair use is another way that this issue gets talked about, especially when there is a legal dispute.
- Include at least two examples of individuals using the work of others (as modeled in the provided slides), one which was found to be transformative or “fair use” and one which was not.
- Visual Artists Rights Act (VARA)
 - Emphasize that these are rights specifically for creators of visual art.
 - Differentiate between economic rights and moral rights.

If time permits, have students reflect on their completed projects with a free-write or think/pair/share: what would they view as a “a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation”?

As a follow up: did any students come up with examples for the previous prompt that would actually be considered new works? Remind students that in such a case VARA would no longer apply. How do they feel about that?

Art as Conversation case studies

These two recent scenarios provide an opportunity to work through the economic and moral complexities of ‘making art.’ Specifically, these case studies illustrate outcomes of ‘building on existing culture,’ as outlined by the Code. While the two case studies suggested should remain relevant for some time, feel free to swap in other situations that speak more to your particular institutional or pedagogical circumstances. (About 60 minutes—to adapt for a shorter session, one case study can be used instead of two.)

“Charging Bull” and “Fearless Girl”

Start by giving students some brief details about the two statues: who created them, how and where they were installed, etc. One of the provided slides contains details about both statues, which you can use as a starting point. Note: There is a “Charging Bull” live webcam that you can show, if desired: <http://chargingbull.com/video.html>

Introduce the threads of tension

- Di Modica, creator of “Charging Bull, protested the placement of “Fearless Girl”: “[His] lawyers say that “Fearless Girl” has subverted the bull’s meaning, which Mr. Di Modica defined as “freedom in the world, peace, strength, power, and love.” Because of “Fearless Girl,” [his lawyer] said, ““Charging Bull’ no longer carries a positive, optimistic message,” adding that Mr. Di Modica’s work “has been transformed into a negative force and a threat.” (Quoting from coverage in the [New York Times](#).)
- Reading the message of “Fearless Girl” as genuine or Wall Street marketing: Can the feminist message of the statue coexist with critiques of it being commissioned by an investment company? New York City Mayor Bill de Blasio [tweeted](#), “Men who don’t

like women taking up space are exactly why we need the Fearless Girl.”

Possible Discussion Prompts

- While VARA does not apply to artworks created before 1990, we can still consider whether Di Modica would have a claim to say that his work has been unfairly modified by the addition of “Fearless Girl.” In small groups, have students explore some additional commentary about the two statues before coming to a decision about how VARA applies (two suggested blog posts are included in the “Materials” section, but you could also give students 5–10 minutes to search on their own).
 - Additional questions for students: Whether or not VARA should apply, is this a “transformative” use?
- The addition of “Sketchy Dog”/“Pissing Pug”: In May 2017, several months after “Fearless Girl” was placed in front of “Charging Bull,” New York artist Alex Gardega added his own voice to the artistic conversation with a small statue of a peeing dog, placed such that it appears to be urinating on the leg of “Fearless Girl.”
 - [Gardega, speaking to the *Washington Post*](#): “The logic explains itself....The dog invading her space is reflective of her invading the space that belongs to the bull. I happen to know someone who knows the artist who made the bull, and so I know what he put into that work....He dropped about \$350,000 of his own money into the sculpture, and ‘Fearless Girl’ statue changes the meaning.”

Frank Ocean's T-Shirts

- As with the first case study, start with a brief overview of the facts. There is a slide provided, but you can also share this information in other ways, or ask students to read a news article in advance (two suggested articles are included in the “Materials” section).
- Link to shirt, still for sale by Green Box Shop.
 - The attribution listed on the website that links to the original tweet was added after the shirt was originally for sale.

Introduce threads of tension

- Attribution and Compensation: The idea to put the text of an original tweet onto a shirt came to Green Box from a direct message on Twitter that, itself, did not include the original tweet from Brandon Male. Twitter and similar platforms are designed to facilitate broad sharing of other people’s works, but in this case, the final format of the shared work (a shirt) was something that was making money.
- Opt-out vs opt-in: The rights guaranteed by copyright law are “opt-out,” not “opt-in.” As soon as something is “fixed” in a tangible medium, it becomes subject to copyright protection. Title 17 defines “fixed” in the following way: “A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is “fixed” for purposes of this title if a fixation of the work is being made simultaneously with its transmission.”¹

Possible Discussion Prompts

- From Vogue Magazine: “Policing copyright and intellectual property laws is always the right thing to do. But in this case, the sentiment behind the statement seems to have gotten lost in the noise....This is where the focus should be, on a brave young kid who stood up for himself and for others like him. And the fact that Robinson wanted to print his words and promote them, even for a small profit—what’s so wrong with that?”²
- Tweets are an example of a medium that is designed to be shared widely. So, where do you draw the line between “sharing” and intellectual property infringement?

REFLECTION

This lesson was originally developed for a two-course learning community that combined a 2D-design course with an introductory cultural studies course. The theme for this learning community was “The Art of Protest,” and students completed a series of visual projects throughout the quarter, including a set of Peace Poles that now stand at the center of our campus in a community garden.

Since this learning community was explicitly interested in the relationship between art and cultural representation, as well as the ways in which art influences people’s perceptions of ethics and justice, it was a natural fit to bring in themes of artistic ownership and attribution. Many of the students in this learning community had little or no formal art education, so both the course instructors and I saw this as a valuable opportunity to frame artistic rights in a comprehensive and nuanced way.

As I tried to develop a strategy for introducing several big con-

cepts—fair use, copyright, and incorporating existing art into new works—all in just an hour, I kept returning to an idea from the ACRL Information Literacy Framework that scholarship should be a conversation. For me, it was most important that students were given ample space to grapple with and apply the concepts introduced in the first part of the lesson. Much as it can require an additional level of expertise to instruct others in an area, students can benefit from the opportunity to practice articulating the underpinnings of artistic ownership for themselves, as both a reinforcement and a way to discover further questions.

The Code section “Three: Making Art” acknowledges that today’s artistic landscape is grounded in quotation, remixing, and the dialogue that can be generated between two or more works. I sought case studies for this lesson that exemplified these themes. The first case study, about the statues “Charging Bull” and “Fearless Girl,” clearly addresses this dialogue, as well as the moral questions that surface when one artist re-contextualizes the work of another. The second case study, about unattributed social media content being reformatted and sold, presents the economic aspects of copyright and the complexities of giving credit when reposting content on social media platforms.

In part, I think because I was working with an immersive learning community, my experience teaching this lesson for the first time were very positive. Students were engaged with the content, generated questions, and seemed to enjoy being charged to reason with the case studies in groups. With a lesson that depends so much on small group participation, there are potential challenges for groups that are for any reason more tentative, but these are the same challenges that exist for many active learning strategies. The first half of the lesson,

prior to the case studies, could probably be reformatted and assigned as a pre-class assignment if time is an issue or you wanted to experiment with a more “flipped” model.

REFERENCES

1. Chapter 1: Subject Matter and Scope of Copyright. Copyright Law of the United States (Title 17). Retrieved from <https://www.copyright.gov/title17/92chap1.html>
2. Bobb, B. (2017, August 3). Brandon Male Wants You to Know Why He Tweeted the Words Worn by Frank Ocean. Vogue Magazine. Retrieved from <https://www.vogue.com/article/fashion-runway-frank-ocean-t-shirt-panorama-brandon-male-twitter>

PART IV

Fair Use & Appropriation Art

7

You Be the Judge: Teaching Students Fair Use by Making Their Own Rulings

Molly Schoen

Intended Audience: Undergraduate students in studio art, graphic design, and related fields.

Session Length: 45-60 minutes

Code Section: Making art

ACRL Frames: Information has value, Scholarship as conversation

ABSTRACT

This instructional session aims to increase students' awareness of copyright and fair use as it applies to their career paths. It engages students' interest by asking them for their own rulings in well-known fair use cases centered in the arts. To begin, an overview of fair use is given, along with a description of section "Three: Making Art" of the College Art Association's *Code of Best Practices in Fair Use for the Visual Arts*. Next, an overview of a case is presented, along with images of the works in question. Students are asked how they would rule on the case before the actual outcome of the trial is revealed. This is repeated for two more cases. For the last portion of the session, students are given the chance to reflect. How does fair use enable and/or hinder creative work? The learning outcomes for this session are for students to understand what fair use is and how widely it may be interpreted, and to recognize how copyright affects their own creative works.

LEARNING OBJECTIVES

- Students will be able to recognize what kinds of work are copyrighted
- Students will be able to explain the four factors of fair use and their limitations
- Students will be able to analyze relevant examples from a fair use perspective

MATERIALS

- Computer with internet connection
- Projector and screen

- Copies of the *CAA Code of Best Practices in Fair Use for the Visual Arts*, specifically Section 3 on page 11, “Three: Making Art.”

LESSON PLAN

Lecture – Provide a brief overview of copyright and fair use

What gets copyrighted? In the US, any original work is automatically copyrighted to its creator or its commissioner (e.g., an ad agency), even if it is unfinished or unpublished.

What is the public domain? The public domain refers to works that are out of copyright and free to use by anyone for any purpose, including commercial. In general, works made before 1923 are in the public domain, as are many government publications (such as NASA photographs).

What is fair use? In the US, fair use is a legal doctrine that allows for limited copying of copyrighted material without obtaining permission from the owner of the work used. Fair use is designed to promote scholarship and creative expression. It allows for criticism, reviews, parodies, and more.

How fair use works: there are no exact rules to determine if something constitutes fair use or not. Fair use language is purposefully vague to leave it open for interpretation, as creative expression takes many forms. While there are different factors of fair use to be considered, in this class we will focus on those that pertain most directly to art and other creative fields. These can be found in “Three: Making Art” of the CAA’s *Code of Best Practices in Fair Use for the Visual Arts*.

The following examples *favor* fair use:

- using material for educational purposes or personal study
- transforming the original work in a way that adds new meaning
- using only a small portion of the original work
- being able to articulate the use of copyrighted material by the artistic objective of the new piece
- citing the source of the original work

The following *do not* favor fair use:

- commercial or for-profit use
- transforming the original in a way that does not add new artistic meaning (such as only changing the medium, e.g., making a lithograph by copying a photograph without altering the content of the image)
- copying an entire work *or* a small but significant part of the work (e.g. a pivotal scene in a film)
- implying that incorporated elements of an existing work are original to the artist copying them
- causing a loss of value or market for the original work

Again, these are not the only situations to determine what favors or does not favor fair use, rather they are the elements most relevant to those making art.

Emphasize the transformative factor. For artists, this may be the most crucial element in determining whether use of copyrighted work is fair or not. See Appendix A of the Code.

Review the case *Kienitz v. Sconnie Nation LLC*

Display on a projector screen side-by-side images of the two works in question: Michael Kienitz's photograph of Madison, Wisconsin mayor Paul Soglin and Sconnie Nation's "Sorry for Partying" tee-shirt, which features an image of Mayor Soglin. These images are easily found online by doing a Google Image Search for "Kienitz v Sconnie Nation".

Present class with the background of this case. Madison, Wisconsin hosts an annual event called the Mifflin Street Block Party. In 2014, Mayor Soglin attempted to shut down the Mifflin Street Block Party, on the grounds of excessive drinking that had occurred in years prior. As a response, Wisconsin apparel brand Sconnie Nation created and sold tee-shirts with an image of the Mayor's face and the words "Sorry for Partying." The image of the mayor was a photograph taken by photographer Michael Kienitz; Sconnie did not seek permission to use the photo before printing it on their tee-shirts. Kienitz then sued for copyright violation.

Review this case through relevant factors of fair use within the Code, section "Three: Making Art".

- Is the use of the photo on the tee-shirt transformative? To what extent? Was it altered beyond a change of medium (photograph to screen printed shirt)?
- Has Sconnie Nation generated new artistic meaning in using Kienitz' photo?
- Is the use of the photo justified by the artistic objective of the shirt?

- Did Sconnie Nation credit or cite Kienitz? Did they imply the photograph was their own original work?
- Does Sconnie Nation's use of the photo on their tee-shirts diminish the selling potential or value of the original photo?

Ask students to come up with their own ruling, weighing the factors both for and against fair use.

After a verdict has been decided upon, reveal the actual outcome of the case: Kienitz did not claim that the tee-shirt disrupted any plans to license the photo for similar uses, nor did he claim that the value for the original photograph was diminished. The court found that, in congruence with the transformative factors of fair use, "Defendants removed so much of the original that, as with the Cheshire Cat, only the smile remains." Further, the judge found that the shirt was designed as political humor, which is also covered by fair use.

Conduct a brief follow up discussion. Are students surprised by the outcome?

Repeat step two for another case: *Gaylord v. United States*

Display on a projector screen side-by-side images of the two works in question: Frank Gaylord's sculpture "The Column," and the 37-cent postal stamp that depicts a photo of "The Column" covered in snow. These images are easily found online by doing a Google Image Search for "Gaylord v. United States."

Present class with the background of the case. "The Column" is a sculpture made by Frank Gaylord for the Korean War Veterans Memorial. A photographer named John Alli later took a photograph of the sculpture covered in snow and sold the rights to the photograph to the United States Postal Service for \$1,500. In 2002, the

USPS released a stamp with Alli's photograph of Gaylord's sculpture. Gaylord then sued the USPS for copyright infringement because they did not seek permission from him to use his work on their stamp. The Postal Service's defense was that Alli's photo was a derivative work in its own right and thus consent from Gaylord was not required.

As with *Kienitz v. Sconnie Nation LLC*, review this case through the factors of fair use and the Code, section 3.

- Is the use of the sculpture in the stamp transformative? To what extent? Was it altered beyond a change of medium (sculpture to photograph)?
- Was use of this sculpture justified in the artistic objective of commemorating the Korean War? Was new meaning given to the sculpture from the stamp?
- Did the USPS credit or cite Gaylord for his work? Did they imply the sculpture was a work of Alli's?
- Does the Postal Service's use of the sculpture diminish its potential market? Did they generate significant income from using this sculpture?

Ask students to come up with their own ruling, weighing the factors both for and against fair use.

After a verdict has been decided upon, reveal the actual outcome of the case: the Federal Circuit court found that the USPS's use of "The Column" was not transformative and therefore the government was liable for copyright infringement. Since "The Column" was not a joint work by Gaylord and Alli, the Postal Service should have also obtained permission from Gaylord before publishing the stamp.

Conduct a brief follow up discussion. Are students surprised by the outcome?

Repeat step two for another case: *Cariou v. Prince*

Display on a projector screen side-by-side images of the two works in question: one of Cariou's original photographs from *Yes, Rasta* and a corresponding copy by Richard Prince, such as "Graduation." These images are easily found online by doing a Google Image Search of "Cariou v Prince".

Present class with the background of the case. In 2000, photographer Patrick Cariou published *Yes, Rasta*, a book of his photos taken of Rastafarian culture in Jamaica. *Canal Zone*, a series of collages by artist Richard Prince, heavily incorporated Cariou's photographs. Prince did not credit Cariou's photographs in his work. The Gagosian Gallery in New York exhibited *Canal Zone* in 2008, with sales of the artworks amounting to over \$10 million. Cariou then filed a copyright infringement suit against Prince.

As with *Kienitz v. Sconnie Nation LLC*. and *Gaylord v. United States*, review this case through the factors of fair use and the Code, section 3.

- Has Prince transformed Cariou's original photographs beyond a change of medium (photograph to collage)? To what extent?
- Was use of Cariou's photographs justified in Prince's artistic objectives? Was new meaning generated by Prince's collages?
- Did Prince attribute Cariou's original photographs? Did Prince imply the reproduced photographs were original to him?

- Does Prince's incorporation of Cariou's photographs diminish the market or value for Cariou's work?

Ask students to come up with their own ruling.

After a verdict has been decided upon, reveal the actual outcome of the case: In March 2011, the Southern District of New York ruled in favor of Cariou, finding that Prince's works were, in fact, infringing. The court found that the works in question were not transformative, because the defendant did not make a claim that he was commenting on Cariou's original photographs.

However, Prince appealed the case. The Second Circuit Court of Appeals reversed the initial ruling in 2013, finding that Prince's collages were, in fact, transformative to a "reasonable observer," which therefore qualified for fair use. They clearly stated that artworks did not need to comment on the works they were appropriating.

Conduct a brief follow up discussion. Are students surprised by the outcome? Does the law differ from students' own beliefs about what is ethical in appropriation art?

Optional Section

Discuss the purposefully vague nature of fair use. Bring up the inherent difficulties that many artists face when going to court, that is, a lack of legal expertise and the high costs of legal counsel and fees.

Provide the following examples (or supply your own) of other ways artists have reckoned with their work being used without permission.

- ShopArtTheft.com—An online store of items by independent designers that have been (allegedly) ripped off by major retailers including Zara, Gucci, and Target. The website has comparison

images of the original works and very similar, mass-produced copies. Now available on the Wayback Machine:

<https://web.archive.org/web/20180112071116/>

<http://www.shoparttheft.com/>

- Suicide Girls Re-appropriate Richard Prince—Prince’s “New Portraits” series, which exhibited at the Gagosian Gallery in London in 2015, consisted of framed prints of screenshots taken from other people’s Instagram accounts. Prince’s only transformation of the posts was the inclusion of his own comment at the bottom of each photograph. One of Prince’s prints, taken from the Instagram page of the burlesque group Suicide Girls, had a price tag of \$90,000. Suicide Girls responded not by taking him to court, but to “re-appropriate” their same Instagram post and sell reproductions of it for \$90, with all proceeds going to charity.

Are these examples effective ways of handling copyright infringement allegations while avoiding the court system? Why or why not?

Discussion

Think of a piece you made recently, or one of your favorites, and imagine an example of a fair use of that work.

As creators, how would you feel if someone used your work without permission or attribution? What might you do about it?

Now put yourself in the role of an appropriator. If your art does not incorporate copyrighted elements, imagine that it does. Do you feel that fair use laws would help or hinder your creative expression? Would you be more hesitant or more empowered to use others’ work now that you have an awareness of fair use?

REFLECTION

I first devised this lesson after being invited to guest lecture for the Art and Ethics class at the Fashion Institute of Technology (FIT). This course is offered as part of the Art History and Museum Professions (AHMP) undergraduate program, but many students in the class were majoring in art and design-related fields.

Faculty often lament that many students are ill-equipped to find and use visual media effectively. In other words, they are not very visually literate. Because students at FIT are preparing for careers that rely heavily on visual materials—from seeking inspiration to selling their own work—it is essential that they are aware of fair use. Having even a basic understanding of fair use as it relates to making art can enable students to reach their fullest potential as artists, by feeling confident in knowing what forms of appropriation are acceptable and also by knowing what rights they have over their own work.

The nature of social media sites, which most students use daily, also brings up many issues in regards to intellectual property. Typical social media behavior includes re-posting other people's content with just a few taps on one's phone. "Sharing" these copyrighted works is encouraged, but giving credit to the original creator is not. Students often unknowingly infringe copyright on apps like Instagram and Twitter without repercussion, except perhaps the rare occasion of being asked to give credit or take something down. But in the classroom, not attributing others' work may result in a lower grade or even a plagiarism investigation.

I have given many one-shot sessions on image research and visual literacy before. In my experience, students are not exactly thrilled to learn about copyright and fair use. The ambiguous nature of copy-

right along with its complicated legal language make it a difficult subject for many to comprehend. The best way I've found to make the complexity of fair use easier to understand is to use case studies involving familiar artists, television shows, news organizations, etc. as examples. Presenting side-by-side, images of the works in question quite literally lets me "show, not tell" the issues of fair use surrounding a given case. Asking students to play judge and come up with their own ruling first allows for them to think critically about how fair use factors into both the plaintiff's and defendant's arguments. It is also, of course, much more engaging than simply listening to an instructor lecture about the cases.

In the Art and Ethics class, I was fortunate to have an attentive, engaged audience. This is probably because the students were upper-classmen and were either taking the class towards their major or had selected it as an elective. In either case, they enrolled in the class with a genuine interest in the subject matter. Other classes have been a bit more challenging to engage, but I have found that in most cases, explaining how copyright factors into artists' careers, is enough to generate at least a basic awareness and conceptual understanding of fair use.

Other cases

Alternate court cases can be used in addition to or in place of the three discussed in this lesson plan. Some other possible options are:

- *Fairey et al v. The Associated Press* – a dispute over whether the image of Barack Obama used for artist Shepard Fairey's iconic "Hope" poster was taken from an AP photo, and whether or not his adaptation could be considered fair use.
- *Reiner v. Nishimori* – photographer T.C. Reiner created a stock

photo called “Casablanca” in 1997. An art student in 2008 used “Casablanca” in a mock ad for a class assignment, and posted the resulting work publicly on his Flickr page. Reiner sued the student and the university for copyright infringement.

- *Jersey Media Grp., Inc. v. Pirro* – North Jersey Media Group owns a well-known photo of 9/11 showing firemen raising the American flag at the ruins of the World Trade Center site. This photograph, in an image juxtaposed with a World War II photograph and the hashtag #neverforget, aired on the Fox News Network’s show *Justice with Judge Jeanine*. NJMG claimed copyright infringement over Fox’s use of the photo.

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8

Copyright and Fair Use Instruction for Art and Design Students: A Visual Approach

Allan Kohl

Intended Audience: Advanced undergraduate or graduate art students; session is adaptable

Session Length: Introductory lecture portion is 50—70 minutes; guided discussion is 45—60 minutes

Code Section: Making art

ACRL Frames: Information creation as a process, Information has value

ABSTRACT

The Professional Practice course at the Minneapolis College of Art and Design (MCAD), intended to help art and design students develop practical career skills, is structured around a series of afternoon-long presentations by guest speakers. The session dealing with copyright, contracts, and licensing is co-presented by MCAD's Visual Resources Librarian and a Minneapolis attorney practicing in art and entertainment law.

Copyright is presented as a legal framework balancing the interests of content creators and content users, reminding students that they need to know how to protect and benefit from their own work, while also developing ethical and legally sustainable parameters for building upon existing works created by others.

The two facilitators introduce basic concepts of copyright law—such as the public domain, derivative works, fair use, transformative reuse, and “work for hire”—through lecture, display, and guided discussion of visual examples, including works by contemporary local artists. The course also introduces students to fair use guidelines formulated by user communities.

LEARNING OBJECTIVES

- Students will develop their ability to evaluate the originality of form and content in existing visual works created by others
- Students will apply sustainable legal and ethical standards for appropriating, quoting, or transforming various elements of existing works created by others for incorporation into their own creations

MATERIALS

- This class presentation is based on an extended PowerPoint developed by the instructors, from which ten representative examples have been selected for inclusion with this lesson plan (see [appendix 6](#))
- In conjunction with this class, the instructors' notes and links to online resources are also posted on the online course pages of the Professional Practice class.

LESSON PLAN

The College Art Association's *Code of Best Practices in Fair Use for the Visual Arts* section "Three: Making Art" provides the student artist or designer with practical guidelines for applying copyright principles to their own practice. This resource can be introduced early in the lesson, and specific examples can then be used to illustrate the Code's recommendations.

MCAD students tend to have a highly visual learning style, so our presentation of the basic concepts and principles of intellectual property law is based on visual examples along with verbal and text-based information. We begin by covering a set of basic terms, principles, and definitions, derived in part from the "[Principles and Definitions](#)" section of the Visual Resources Association's *Digital Image Rights Computator* (DIRC), an online rights assessment tool:

- What is copyright?
- How does copyright work?
- How do I secure copyright in a work I create?
- How long does copyright protection last?

- What is the “bundle of rights” in a copyright?
- What is the public domain?
- What is fair use?
- What is a derivative work?
- What is a transformative work?
- When I sell my work, do I also give up the copyright?
- Do I have any rights in my collaborative work for an employer such as a design firm, or a “work for hire” commission?

Whenever possible, we help to answer the questions in this outline with images that clarify abstract concepts and, in some instances, provide the class with opportunities for discussion or expansion.

A common initial question students ask is: “How do I get copyright in a work I create?” If no one volunteers such a question, the facilitator might ask: “Do any of you know how to copyright your work?” The easy answer would be that, under the current United States Copyright law, a creator automatically establishes copyright when a work is “[fixed in a tangible form of expression](#).” But what exactly does this mean for the visual artist? For the student who works in traditional media, such as painting, sculpture, or printmaking, this might be when the artist affixes a signature, records a date or edition number—or simply declares that the work is finished. Completion can be further documented in a photograph or other record of the work, or through written evidence such as a consignment to a dealer, or a sales receipt to a purchaser. The U.S. Copyright Office’s [Circular 40A: Registration of Claims to Copyright in Visual Arts Material](#) offers additional media-specific guidance.

However, an increasing number of our students work primarily with digital media, and may have a more difficult time knowing when a “born digital” work can be considered “fixed in form.” Here the facilitator can invite discussion with open-ended questions such as “When do you think that a ‘born digital’ work could be considered ‘fixed in form?’” “If you have created a ‘born digital’ work, how might you document that it has indeed been ‘fixed in form?’” Then, through discussion, the facilitator could guide students to think about using some combination of file naming and saving, time stamps, embedded metadata, and file sharing protocols.

As straightforward as the principle of “automatic copyright” may at first appear, students need to be reminded that “fixed in form” does not apply to an unrealized idea, a concept, a technique, or a proposal (except, of course, for any tangible components such as preliminary sketches, storyboards, etc.). Also, the manner of working that comprises an artist’s “signature style” is generally not copyrightable either. To illustrate this point, we look at Norman Rockwell’s “The Connoisseur,” [Example #1, see [appendix 6](#) for illustrations] in which a middle-aged man is depicted looking at a work that most visually literate viewers would recognize as one of Jackson Pollock’s Abstract Expressionist “drip paintings.” Except that the painting on the wall isn’t actually a Pollock at all, but rather Rockwell’s skillful use of the characteristic aspects of Pollock’s style. In this way, Rockwell established his own copyright in the illustration while avoiding infringing on any of Pollock’s copyrights!

Understanding the concept of “derivative works” is important for visual artists as they build upon and re-examine the precedents and prototypes provided by the world of existing art. As upper division students, most of our course participants realize that no work of art is

created in a vacuum; each piece of visual culture rests upon an existing infrastructure of intellectual and creative content, which provides the artist and designer with prototypes, precedents, and cultural context to build upon—or to react against.¹

The history of art is replete with examples of “homage works,” works that are significantly based on historic prototypes while providing a form of critical commentary on the originals. [Example #2] Edouard Manet’s intentionally shocking *Olympia* (1863) was based on Renaissance paintings of female nudes such as Titian’s *Venus of Urbino* (1534). Manet’s work in turn inspired Mel Ramos’ *Manet’s Olympia* (1973) in the style of a men’s magazine centerfold, and Larry Rivers’ ironic racial inversion *I Like Olympia in Blackface* (1970). The impact of the two latter works, in fact, depends in large part on the viewer’s recognition of the Renaissance and Modernist works they reference.

Once students understand the concept of derivative works, they can immediately grasp the importance of the public domain in providing them with material that they can freely adapt and re-use. They see how contemporary graphic designers, like Minneapolis artist Adam Turman, use public domain works like Alphonse Mucha’s 1902 Art Nouveau poster as the inspiration for a new expression with a similar theme and composition. [Example #3] Norman Rockwell copied the figure pose of the Prophet Isaiah from Michelangelo’s Sistine Chapel fresco for his magazine cover illustration of Rosie the Riveter. [Example #4] Although Rockwell’s specific adaptation is protected by copyright, the idea of re-using figures and compositions from historic works of art is not; other artists are free to make contemporary updates of this and other works. Many illustrators, comic artists, and graphic novelists do just that, as we demonstrate by examining how James Allen has borrowed the twisted torso, running legs, and ago-

nized face of Cain from William Blake's *The Body of Abel Found by Adam and Eve* in the figure of Mark Trail for a syndicated newspaper comic strip. [Example #5]

The *Bridgeman v. Corel* case ([25 F.Supp.2d 421 \(S.D.N.Y. 1998\)](#)) established that straightforward photographic reproductions of two-dimensional public domain art works are not copyrightable. Dean Rohrer's "Monica Lewinsky" cover for the *New Yorker* is a partial re-working of a reproduction of Leonardo da Vinci's familiar *Mona Lisa*. [Example #6] Today, many major museums are making robust digital images of works in their collections readily available on-line, and some no longer attempt to restrict how people may download and use these images. This gives Photoshop-savvy students the freedom to modify images of historic paintings and incorporate these into their new digital creations.

Once they understand the importance of public domain content in the creation of derivative works, students are ready to explore the possibilities of fair use. We review the four statutory fair use factors ([17 U.S.C. § 107](#)), and the specific uses of copyrighted works permitted, including criticism, comment, news reporting, and teaching.

Visual references and quotations are often key elements of parody, satire, and other forms of artistic humor. Courts have generally held that parody (quoting a work to provide a humorous critique of that work) is among the permitted fair uses of copyrighted works. However, the legality of copying a work for purposes of satire (using a quoted work as the basis for humorous criticism of something besides the quoted work) is sometimes less certain. Although such uses have also been upheld as legal in specific instances, much depends on the purpose, character, and amount of quotation. As the Code recom-

mends, the artist should be prepared to articulate a clear rationale for any such use.

Among the most frequently “quoted” works of twentieth century art is Grant Wood’s iconic *American Gothic*, in which the portraits of an old farmer and his spinster daughter have come to represent traditional, often conservative, American values. One can make the case that a humorous visual reference to Woods’ painting, like this cover of a Minneapolis magazine, exemplifies both parody *and* satire. [Example #7]

One of the most crucial objectives of copyright and fair use instruction for visual artists is for students to develop a clear understanding of what is meant by “transformative use.” In its 1994 *Campbell v. Acuff-Rose* decision, the United States Supreme Court articulated a transformative use as one that “adds something new, with a further purpose or different character, altering [the original] with new expression, meaning, or message.”² In his review of subsequent court cases testing the parameters of transformative use, legal scholar Neil Weinstock Netanel noted that such uses may involve “transforming the expressive content of the original work by modifying or adding new expression [or by] transforming the meaning or message of the original.”³

The combination of transforming content and transforming message lies at the heart of most acts of artistic appropriation. In exercising their judgment about whether, and to what degree, they may borrow or quote from an existing copyrighted work, it is important that students understand how the doctrine of transformative use has evolved in recent court judgments as an expansion upon the four statutory fair use factors.⁴ We preface this section by showing two cases of artistic

appropriation based on copyrighted works. One is a familiar example of Roy Lichtenstein's use of several elements from different panels of a story in DC Comics' *All-American Men of War* #89, published in early 1962, for his Pop Art painting *O.K. Hot Shot*, dated later the same year [Example #8]. The other example, the title panel from Trina Robert's comic "*Lulu's Back in Town*," is based on a 1934 painting by Reginald Marsh [Example #9]. Together, these two examples demonstrate that the process of appropriation and transformation goes both ways between so-called "serious" art on the one hand and popular visual culture on the other.

To conclude this lesson, we review the College Art Association's *Code of Best Practices in Fair Use for the Visual Arts* and discuss how students can use the information we have shared with them to conform to the practices recommended in section "Three: Making Art". Consider, for example, the Code's statement:

The use of a preexisting work, whether in part or in whole, should be justified by the artistic objective, and artists who deliberately repurpose copyrighted works should be prepared to explain their rationales both for doing so and for the extent of their uses.

To put this recommendation into practice, we ask the students to assess a clear instance of an artist "taking" a portion of a copyrighted work in another medium to decide whether this is a justifiable transformative use or an act of copyright infringement [Example #10]. Students are invited to put themselves in the place of painter Malcolm Liepke and articulate their defense of his appropriation (or, taking the opposing side, role-play photographer Nan Goldin and demand to know why this act of copying shouldn't be considered an infringement of her work!).

We conclude the lesson by briefly presenting the portfolio of [fair](#)

[use guidelines](#) formulated by user communities, and made available through the Center for Media & Social Impact (CMSI) at American University in Washington, DC, as well as the US Copyright Office's [natural language explanation of fair use](#) and how it is typically applied. Links to all of these resources can also be posted on the Professional Practice (or relevant class) course pages.

REFLECTION

At present, this unit on copyright, fair use, and licensing is part of the third-year curriculum in MCAD's Professional Practice course. Although this content is probably most relevant to upper-division students nearing the completion of their degree programs and anticipating their future careers as working artists and designers, I believe that at least some of this basic information should also be presented to our Foundation (first-year) students, so that they can proceed through their entire four-year degree sequence equipped with a solid, workable understanding of copyright and fair use. Our Foundation year includes two semesters of art and design history, in which students have many opportunities to observe examples of artistic “borrowings,” homage works, and similar stylistic quotations which could inspire their own projects, while at the same time offering them historic precedents to re-use as raw materials. Early instruction would also give our students the opportunity to explore concepts such as fair use and transformative use in their projects and assignments, while cultivating their ability to explain and defend their choices in critiques before their instructors and peers. This goal conforms with the Code, which advises that “the use of a preexisting work, whether in part or in whole, should be justified by the artistic objective, and [that] artists who deliberately repurpose copyrighted works should

be prepared to explain their rationales both for doing so and for the extent of their uses.”

This presentation will continue to evolve, reflecting the legal environment seen in recent court cases; it will also be refined in response to questions raised by students during discussions each year. I continue to update this lesson by seeking new examples to illustrate what might otherwise be just a series of dry, text-based bits of information. When possible, I look for examples of works by local and regional artists with whom our students might be familiar. Although I have spent many years as an information professional learning about copyright issues, advocating for an expansive understanding of fair use, and putting my expertise to work in my own professional practice, each time I prepare to teach this unit I try to put myself in the position of the student who doesn’t have this background, and who will perhaps be thinking: “Don’t just tell me about some legal concept—show me examples that help me understand what you’re talking about, and how it relates to my own work!”

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1. This understanding is expressed in Judge Pierre N. Leval’s commentary “Towards a Fair Use Standard,” (103 *Harvard Law Review* 1005 1989-1990) which set forth the legal argument subsequently adopted by the U.S. Supreme Court in its articulation of “transformative use” as a valid expansion of the statutory fair use definition in the *Campbell v. Acuff-Rose* decision (*Campbell v. Acuff-Rose Music* (92-1292), 510 U.S. 569 (1994)). Leval noted that “all intellectual activity is in part derivative. There is no such thing as a wholly original thought or invention. Each advance stands on building blocks fashioned by prior thinkers . . . important areas of intellectual activity are

explicitly referential [and require] continuous examination of yesterday's theses (1109).”

2. Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 579 (1994).
3. Neil Weinstock Netanel, *Making Sense of Fair Use*, 15 Lewis & Clark L Rev 715, 746 (2011).
4. Ibid.

PART V

Fair Use & Professional Practice

9

Illustrating a Technical Manual: Copyright and Fair Use in a Real World Professional Context

Karyn Hinkle

Intended Audience: Upper-division undergraduate students in writing, graphic design, illustration

Session Length: Works well as a one-shot session the length of a usual course period, and can flexibly stretch from 50 to 90 minutes

Code Sections: Analytic writing, Making art

ACRL Frames: Information creation as a process, Information has value

ABSTRACT

This lesson was developed for students preparing to enter professional practice who were assigned to write and/or illustrate a technical how-to manual on a topic of their choice (how to put on ski boots, draw blood, use a fitness tracking app, etc.). The teaching librarian conducts a class session on finding and creating images to illustrate the manuals and teaches differences between using copyrighted and non-copyrighted images. The students work on finding images in the public domain, creating their own images, and incorporating copyrighted images via Creative Commons licenses and the principle of fair use. Librarians can teach this lesson with students who have been assigned to write or illustrate a how-to manual by a course instructor. Alternatively, librarians can assign illustrating a how-to manual as their own standalone project to use in any image use instruction session as a way to make finding and illustrating with images relevant to a real-world, professional practice.

LEARNING OBJECTIVES

At the end of the session, students will be able to:

- recognize the differences between copyrighted and public domain images
- select images for their projects from the public domain or create new images of their own
- explain two legal methods of using copyrighted images in their work, fair use and Creative Commons licenses
- summarize their images' copyright status and defend their use of the images in their projects

MATERIALS

- This class is best taught in a computer lab classroom or other setting where the students each have access to a computer or mobile device for hands-on searching. Personal cameras, such as on a mobile phone, can also be useful for students to have in class.
- Worksheet, Assessment, Rubric, and Slides (see [appendix 7](#))

LESSON PLAN

Introductions (10-20 minutes)

Introduce yourself and consider showing a highly illustrated example of a brochure or manual you've seen or telling an anecdote about using a manual (IKEA stories are clichéd but always work!). Explain that finding images to illustrate a how-to manual can be a great way to explore copyright and issues of fair use, and that it's a very practical, real world use for image searching and image creation.

If the students have already been assigned a manual in advance by their course instructor, have each student state their name and the topic of their technical manual as well as any questions or thoughts they already have about illustrating it—the latter can be prompted by questions or comments from you (“are you thinking about a particular brand?” “Do you have access to that machinery/material/etc?” “Oh, that sounds like something we can certainly find online—we’ll get into how and where in the workshop!”). If they have not been working on the assignment in advance, or if you are assigning a manual illustration for the library workshop, have each student state their name and brainstorm a how-to idea they could illustrate in a technical manual (how to put on ski boots, how to start a tractor, how to change windshield wipers, how to draw blood, how to use a fitness tracking or financial planning app...).

When the size of the class and your time allows, you can write their topics on the board as they're announced and try to categorize them as physical/personal tasks, tasks with machinery, technological how-tos, etc. To save time in class, you could ask for topics in advance via email or course software if you have access, and categorize them ahead of time, then share the results with the class as they introduce themselves.

Lecture (10-15 minutes)

After introductions, remind the students that technical manuals need to be illustrated visually, and that illustrations are images created by either oneself or by other people. Whenever people use images, we will run into issues of copyright, so let the class know you're going to review the principles of copyright in a short overview.

You can use slides (see [appendix 7](#)) to help explain the definitions of copyright, public domain, fair use, and Creative Commons licenses, and review the history of law and the current interpretations of it, including CAA's (and other similar institutions') *Code of Best Practices in Fair Use for the Visual Arts*, and discuss how and why it all applies to images and therefore to choosing illustrations for a technical manual.

Discussion (10-15 minutes)

After you've reviewed formal definitions in your lecture, you can interactively discuss the students' manuals more specifically, soliciting their questions and thoughts. Open by inviting them to think about what types of images they would need to illustrate a how-to manual on the topic of their choice. For example, many people might like a representative opening image for the front cover or opening part of their manual—a pair of laced shoes for a shoe tying how-to; a still shot

from a famous movie or painting to set a mood or scene. They will also need discrete close-ups to illustrate the process itself—a person’s fingers forming loops for a bow; a stethoscope being positioned in a blood pressure cuff. Then ask what kinds of copyright considerations there could be for the types of images they might have in mind.

You can start the copyright and fair use conversation with some real talk: for a school project or in an academic context, we have ample freedom to use images we find anywhere. Nobody is going to sue you over an image you’ve handed in for this assignment! But also propose a thought experiment for the students: “What would it be like if you had a technical writing job working for a company that produced the topic of your manual? What if you were a university student who wanted to make a real manual right now to put online to help people for free, or even to sell your manual? What would the company think if you’re making a manual for a brand name product but you don’t work for the company? What are risks and benefits of using different types of illustrations?” Show the students they have choices to make based on different professional contexts. This is a good time to remind them of one of the objectives of the workshop: “Students will be able to summarize their images’ copyright status and defend their use of the images in their projects.” No matter what kind of images they use, students need to understand and be able to describe how and why they are using them.

If you categorized and/or listed the students’ topics on the board in Part 1, the list could be used as a guide to discuss why one may wish to use images with certain copyright statuses in the various contexts of their how-to manuals. Are some people illustrating step-by-step methods? If so, you can discuss how older illustrations now in the public domain could help, as well as government publications that

include medical or first aid illustrations, or parks and environmental infographics. Are some people describing how to use copyrighted software apps? What about particular brands or products? If so, this can be a good place to talk about fair use of copyrighted images in practice, reviewing the points you made about the Code's principles with your slides in Part 2.

The group discussion section is a good place to talk about creating your own images for illustrations, too. Ask the students if they could photograph themselves carrying out how-to steps for their topic. Would the resulting images be copyrighted? If they published the images online or in a print manual, what kind of fair use could others make of their images? Remind the students that they could apply a Creative Commons license to photos they create as illustrations so that others could use them. This is also an opportune time to discuss photo release forms if photographing people and site permissions if photographing in a public place. Even in a context where students are creating their own images, copyright factors will be in play, and the students should begin to understand and articulate their rights as creators and users of images.

Work Time (10-30 minutes)

Once the students have thought and talked about the copyright and fair use implications of different types of images for their illustrations, it is time to dive into some hands-on work. This is the most flexible section of the class. It is time for the students to search online for images and brainstorm ways to make their own. To facilitate this activity students can complete an in-class worksheet (my example is attached below) while you are available to give them help and advice.

On the projector, show the students a list of online resources they

can browse to find and select public domain and Creative Commons images for use in their manuals. You can type up a list of sites to display on a slide (as I did) or you can point the browser to a website or LibGuide page your library has already developed.

Here are some copyright-friendly image resources and examples of how-to manual illustrations that could be found in them:

Public domain images:

- Digital Public Library of America <https://dp.la/>
 - Images from America's libraries, museums, and archives including sets from the Library of Congress, the New York Public Library, and many others.
- Europeana Collections <http://www.europeana.eu/portal/en>
 - Similar to the DPLA linked above, but for Europe. The out-of-copyright images found in Europeana and DPLA (many from books, line drawings, photographs, and other works of art) can be good sources for detail shots and opening illustrations for how-to manuals.
- Catalog of U.S. Government Publications (CGP) - <https://catalog.gpo.gov/>
 - A searchable index to government publications. More recent publications have a link to an online version.
- Publications.USA.gov <https://publications.usa.gov>
 - Best browsed by the subject categories provided. The publications archived here and in CGP tend to contain lots of

images of people performing actions, such as studying, using a credit card, getting medical tests and procedures, etc., which is a great source for illustrating how-to manuals.

Creative Commons images:

- Creative Commons <https://creativecommons.org/>
 - Information on the different CC licenses and links to collections of CC images on all topics.
- Wikimedia Commons <https://commons.wikimedia.org/>
 - Public domain media and freely-licensed educational content.
- Flickr: The Commons <https://www.flickr.com/commons>
 - Many public domain and CC images, including many uploaded by individual users. Beware an interface that makes it easy to slide away from the Commons and into parts of the site with copyrighted images.

In a large class, you can circulate the room as a helper while the students complete their worksheets, either on their own or in pairs. With a smaller number of students, you could workshop some projects on-screen. Or you could even stage a photo shoot! Adjust this section to fit the time you have and your students' interest. As your students work and ask questions, remind them that they will need to be able to summarize their images' copyright status and defend their use of the images in their projects, especially if they were creating a manual in a real-world context. Many students will have no trouble taking screenshots of copyrighted software applications, or locating images of copyrighted movies, characters, or other sources. They

may need more help navigating online collections of public domain or Creative Commons licensed images. When answering their questions, remind them of the Code, the principles of fair use, and the different reasons you have discussed in the workshop for using various images with various copyright statuses.

Conclusion (5 minutes)

Thank the students for their questions and participation, show or describe some of the good images that have been found or created that day, and mention the images' copyright status and how fair use might come into play to reinforce the concepts covered. Remind and encourage them to visit the library frequently or contact you directly as their librarian if they have questions about illustrating the manual or anything else. Explain the post-class assessment exercise and scoring rubric (attached below), remind them of its due date, and say goodbye and great work.

ASSESSMENT

I've used a summative assessment to test students' grasp of copyright and image use issues. It's designed to be completed after their final how-to manual projects are turned in if students are working on a piece assigned by their course instructor. Alternatively, if you assign the how-to manual as your own project within the library session, the assessment can be done immediately afterwards: it could be distributed to and collected from students in class; later via email attachment; or on a Google form or other online survey instrument if your institution collects statistics that way.

Importantly, the assessment questions align with each of the learning objectives for the session (recognize the differences between copyrighted and public domain images; select images for their projects

from the public domain or create new images of their own; explain two legal methods of using copyrighted images in their work, fair use and Creative Commons licenses; and summarize their images' copyright status and defend their use of the images in their projects). The assessment questions also build upon the concepts presented with the in-class worksheet that students completed in the course of the workshop, so the students already have a personal foundation for what is being assessed.

For example, the in-class worksheet asked students to “Now answer some questions about the images' copyright status and your right to use them in your technical manual: Does the provider of the online image own the rights to it? What rights are the providers of the image extending to you, if any? What use could you make of the images in your manual? Would it be an acceptable use under the terms of copyright and fair use?” Ideally, students will have thought about and written answers to these questions with help from you in class. When it comes time for the assessment exercise, the questions should feel familiar, and their in-class answers can help them further consider the assessment questions.

From the assessment tool: “Is the image you selected copyrighted, shared with a Creative Commons license, or in the public domain? How do you know? Based on your image's copyright status, should you use it in your manual? How can you justify its use? If it is copyrighted, does the principle of Fair Use apply?”

At the end of this library workshop, and as judged by the assessment exercise, I want students to be able to accurately describe the differences between copyrighted, Creative Commons, and public domain images in detail; select copyright-friendly images for their projects

(their own images, public domain images, Creative Commons licensed images, or copyrighted images justified by Fair Use); and persuasively justify the use of their images by explaining the rules for using their own, public domain, or Creative Commons images, or by providing sound Fair Use reasoning for using copyrighted images. The best students will be able to do all of these things; others will do some better than others. Students who have not yet grasped the principles of copyright or fair use may not be able to accurately describe the differences between copyrighted, Creative Commons, and public domain images, or they might select copyrighted images for a project whose use does not seem justified by Fair Use. They may not persuasively justify the use of their images (even if they use images well) if they cannot describe why those are used appropriately.

I provide students with links to or copies of the scoring rubric and the worksheet completed in class to help them with the assessment form. The assessment form I've used for this exercise and the scoring rubric are attached, with color-coded questions and scores.

REFLECTION

"Illustrating a Technical Manual" was first created as part of a library-wide initiative to develop a learning objective about understanding copyright. Our information literacy coordinator asked me in my role as the visual arts librarian to develop an image copyright session for a communications class that had been given the technical manual assignment. Like many new classes, this one presented a tempting opportunity to try to teach and assess absolutely everything one could about image copyright and fair use. The first time I taught it, I definitely tried to impart too much. The students were a group of freshman and sophomore level students, many of whom had never before encountered the concept of copyright. Their often faulty or confused

reasoning for using various images in their final projects showed it was difficult for beginning students to understand fair use when they had a brand new understanding of copyright.

If you teach this lesson to beginning undergraduates, I would recommend scaling back the assignment and learning objectives and encouraging them only to use public domain images or their own images. A class with these constraints still teaches copyright concepts without overwhelming novice students. However, for upper division undergraduates somewhat acquainted with copyright, finding images to illustrate a how-to manual is a great way to introduce fair use, the Creative Commons license, and using copyrighted materials legally in a professional context.

For practice using copyrighted materials under the terms of fair use, the Code offers students relevant, authoritative advice and gives librarians clear information they can add to their teaching slides, all of which makes it a valuable tool for this lesson plan. I have shared the Code with students, their instructors, and fellow librarians, and it is also a great document both for empowering students and for reassuring traditionalists that we don't need to be afraid of using copyrighted images in every case or exclude them from either academic or professional projects. Rather, as the Code confirms, there are many legitimate uses for them, including as illustrations in a how-to manual.

One thing that has surprised me about this lesson plan is how much students enjoy both the idea and practice of creating their own images. Some of the best students in class have illustrated their manuals with photos shot on their phones, at home, on their parents' farm equipment, and even in class. Some enjoy the "out" that using

their own images gives them, releasing them from worrying about copyright restrictions at all. Others love the ability to shoot the exact moments they wish to show; still others, especially those who don't often get chances to incorporate creativity into their work at school, seem to enjoy the encouragement to engage in a creative practice in and of itself. Whatever the impetus, students' creating their own images often seems to correlate with strong projects, for which course instructors consistently give very positive feedback. Creating is fun! In the future, I'd like to continue encouraging the practice while also helping students go even further to discover the creativity of re-using or re-purposing others' images in effective and legal ways.

In summary, I've found this professional practice assignment to be a very effective way to talk about fair use in a real-world context. Since the Code, with its audience of writers, artists, museum professionals, and other practitioners, also focuses real-world scenarios, the Code's aims mesh particularly well with a professional practice assignment.

10

Canadian Copyright and Fair Dealing in Relation to Architectural Images and Models in the Academic Setting

Cindy Derrenbacker

Intended Audience: Lower-division to upper-division undergraduate architecture students

Session Length: One hour

Code Sections: Analytic writing, Making art

ACRL Frame: Information has value

ABSTRACT

This lesson plan introduces students to the practice of finding, using, and citing images for architectural study in compliance with fair dealing guidelines and the Canadian Copyright Act. The central learning objective is to understand practical image use within Canadian copyright and fair dealing and to ethically apply this knowledge to the research and presentation of architecture. A secondary objective is to have students consider how this knowledge applies to their model making (imitation vs. innovation) and what the implications may be for professional practice, such as being able to effectively communicate intent to a client. At the conclusion of the lesson, the instructor should be able to assess the lesson's outcome based on students' questions and their written feedback.

LEARNING OBJECTIVES

- Define copyright and fair dealing in the Canadian context and in the local institutional setting
- Recognize when and how fair dealing applies to the use of images and be cognizant of external influences in the design process when making architectural models, giving credit to antecedents when necessary
- Create a philosophical statement related to fair dealing in the academy and in the architecture profession

MATERIALS

- PowerPoint facilities including projector/whiteboard/laptop, laser pointer, whiteboard markers/eraser
- Presentation (see [appendix 8](#))

- Handouts for pre-assessment activity and evaluation of session
- Flip chart paper with markers and masking tape for group activity

LESSON PLAN

Bridge-in (Motivation)

Laurentian University's McEwen School of Architecture is a design-build school in northern Ontario, Canada. Students are taught the importance of craft and are encouraged to research, experiment, design, and create. This culture of making is cultivated through studio assignments as students are required to research, sketch (often by hand), and build various iterations of architectural models or small-scale structures such as ice fishing huts, sculptural winter warming huts, birch bark canoes, and saunas. The question of fair dealing arises as students borrow or adapt design concepts from various sources including books and journals, Internet images, well-known architects, etc., to create structures they call their own, without acknowledging the original source(s) of inspiration. While the primary focus of this lesson is to learn to adopt best copyright and fair dealing practices when accessing and using architectural images, the issue of fair dealing can also come into play when making architectural models. Being self-aware of the influences that drive the design process contributes to one's growth as an architectural professional.

Pre-Assessment Activity (12 minutes)

To get a sense of student knowledge on the topic of copyright and fair dealing, quickly survey the class, asking for honest feedback on where students search for images for their research papers. Write these specific answers on the whiteboard.

Secondarily, distribute promotional/review articles on the "Un/Fair

Use” exhibition from October 2015–January 2, 2016 at the American Institute of Architects (AIA) New York Center for Architecture. This exhibit evolved out of the Fall 2012 Massachusetts Institute of Technology (MIT) Workshop, “Appropriation: The Work of Architecture in the Age of Copyright.” Provide ten minutes for students to (re-)read through one of three brief articles *previously* assigned, all of which focus on the “Un/Fair Use” exhibition in New York. Note that in the interest of time, all three articles will be distributed, but each student will randomly receive only one of the articles to skim and to refresh his or her memory and to potentially comment on during the discussion period.

Promotional/Review Articles

- Amanda Kolson Hurley, “The show, much like the obscure and curiously gripping legal opinions on architectural copyright, rewards the diligent reader,” *Architect* 104 no. 10 (2015): 117–122.
- Anna Vallye, “What’s the use? *Un/Fair Use* at the AIA New York Center for Architecture,” *arq* 19 no. 4 (2015): 325–328.
- “Exhibition: Un/Fair Use,” *ArchDaily*, accessed August 13, 2017, <http://www.archdaily.com/773688/exhibition-un-fair-use>.

While the articles focus on the “Un/Fair Use” exhibit on display in the United States, many of the issues raised in the articles provide a good basis for discussion of copyright and fair dealing in the Canadian architectural context.

Discussion (8 minutes)

Once students have read through one of the three articles, begin by quoting the promotional blurb in *ArchDaily* for the AIA New York exhibit: “Appropriation is as much a part of architecture as the

expectation of novelty, and so it is at the very core of the discipline. Architecture advances via comment, criticism, parody, and innovation, forms of appropriation that fall under the umbrella of fair use. But what about when appropriation is deemed unfair? Where and how are the lines drawn around permissible use? *Un/fair Use* probes that legal boundary.”

Based on the article that each student has read, request student feedback on what they deem to be fair or unfair use when introducing images in their papers and when sketching and constructing architectural models. Some initial questions to ask might be: Do students sometimes change images (size or resolution) that they incorporate in their research papers? Do they credit the sources of their images? Are these image sources freely available in the public domain, found through Creative Commons, or retrieved through *Artstor*, a subscription database that links comprehensive metadata to images and allows for their use in unpublished educational activity?

Other questions to generate discussion might include: How much does imitation factor into innovative architecture? Can you think of some examples? Do students mimic design elements from their studio neighbors or from architects they admire when designing and building architectural models for evaluation by faculty? Is this an acceptable practice or the professional norm? To what extent should your creative work be your own?

Presentation (20 minutes)

Provide a PowerPoint presentation referencing Laurentian University’s institutional copyright policy and the principles of fair dealing based on the *Copyright Act* of Canada (<http://laws-lois.justice.gc.ca/eng/acts/c-42/>). This information is relevant for discussions on incor-

porating images in research assignments and appropriating conceptual design elements from others, especially those that fall under copyright, when creating architectural models. The policies of the local Canadian institution can be substituted for Laurentian's on slides 7, 12, and 14 and the bibliography (slides 18 & 19). If time is short, consider assigning the PowerPoint in advance and discussing salient points during the lesson.

Group Activity (10 minutes)

Following the presentation, ask students to break into 5-6 groups and draft a philosophical statement regarding fair dealing when including images in research papers and when borrowing design elements while constructing architectural models. In the interest of time, the groups will be given several prompts to help get them started. Examples of prompts might be:

1. To meet my goal of acknowledging the sources of information, images or conceptual design elements that have influenced my work, I...
2. In light of today's lesson, one aspect of successful architectural design means...
3. To overcome the challenge of attributing credit to those in the art and design fields from which I mimic or borrow, I...

The intended outcome of this exercise is to have positive peer influence encourage a thoughtful approach to issues of copyright, fair dealing, and appropriation and to develop ethical and professional practices. Because this lesson plan is developed for the Canadian context, reference to the non-profit and National Art Service Organization, CARFAC, the Canadian Artists' Representation/Le Front des artistes canadiens (<http://www.carfac.ca/about/>) could be made

as well as mention of the American-based College Art Association's *Code of Best Practices in Fair Use for the Visual Arts*.

Assessment (5 minutes)

Once the group activity is complete, students will gather as a class and read their philosophical statements. There will be limited time for clarification of statements and follow-up discussion. Finally, students will be asked to complete a simple survey in an effort to gauge the level of learning engagement that has transpired. This form can be printed and circulated or could be electronically distributed and collected through Google Forms.

The simple evaluation form follows:

- Did you find today's presentation: Useful – Not useful – Somewhat useful
- Why?

REFLECTION

While I have not yet tested this lesson plan with students, it stems from a presentation that I regularly deliver at the McEwen School of Architecture entitled "Demystifying the *Chicago Style* for Research Papers." In this presentation for lower-division architecture students I teach a segment on copyright and best practices for citing visual resources for scholarly purposes. I provide guidelines for citing images *Chicago Style* and reference my institution's Policy on Academic Integrity, but focus less on the actual retrieval of images. In another instance, I teach first-year architecture students "On Researching Well" and include a segment on retrieving appropriate images that will enhance the quality of an analytical research paper, introducing the scholarly image database *Artstor* and images available

through Creative Commons that can be used for educational purposes.

This lesson plan is an effort to synthesize some of what I have taught previously and to more clearly present copyright and the principles of fair dealing in the Canadian context and its relevance for students at the McEwen School of Architecture. My hope is that after this lesson, students will appropriately retrieve and cite architectural images in their research papers and consider the principles of fair dealing when constructing models in the studio and beyond. The group activity is an opportunity for students to apply their knowledge. By contributing to a draft philosophical statement regarding fair dealing, students will need to reflect on what they have learned and to consider what sort of ethical stance they will take when using images and when creating architectural models. They may carry this philosophical statement with them into professional practice.

In this age of copyright, it is intriguing that the discipline of architecture encourages the cross-pollination of ideas and designs, i.e., incorporating the good design concepts of others (perhaps a lineage of connected architects) while developing their own fresh approach. At Laurentian University, fourth-year architecture students are intentionally situated adjacent to first year students in the studio so that the lower-division students are positively influenced by the higher-level design work that evolves over the course of the semester in the more senior studio. Students are encouraged to draw upon a diverse palette of design concepts and to bring to bear a range of design elements suitable for particular site constraints and user requirements. Case study research may influence design.

When held accountable in a critique before a panel of faculty or com-

munity clients, students should be able to articulate the influences and deliberate design choices that are at play within their sketches, posters and architectural models. Oftentimes, the more professional student presentations are the ones that acknowledge the design influences of others, especially when it can be shown that a student has built upon these influences and achieved innovations within the constraints of the assignment or the client's expressed requirements. From time-to-time, a tension exists between the appropriation of design concepts in the creative process of making architectural models and the principles of fair dealing. The goal is for students to recognize when they are appropriating and to acknowledge this in the design process through attribution. It is hoped that this self-awareness will continue as students become architectural practitioners.

REFERENCES

1. Booth, Char. *Reflective Teaching, Effective Learning: Instructional Literacy for Library Educators*. Chicago, IL: American Library Association, 2011.
2. Amanda Kolson Hurley, "The show, much like the obscure and curiously gripping legal opinions on architectural copyright, rewards the diligent reader," *Architect* 104 no. 10 (2015): 117-122.
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PART VI

Fair Use & Art History

11

Tracking Transformative Use in Your Writing About Art

Bridget Madden

Intended Audience: PhD students who are working on their dissertations or publishing articles or other scholarly writing

Session Length: 45 minutes to 1 hour, although this can be adjusted depending on the number of student examples you take during the session

Code Section: Analytic Writing

ACRL Frames: Authority is constructed and contextual, Information has value

ABSTRACT

The goal of this lesson plan is to provide graduate students with information about copyright and fair use of images they plan to use in dissertations or journal articles. Students should come prepared with examples of images they're working on or submit to the instructor in advance. The first part of the session defines copyright term lengths, public domain, and other related topics including open image collections and copyfraud. The instructor demonstrates how to determine copyright status with examples of the students' images and invites student participation and discussion in this demonstration. The second part defines fair use and presents section "One: Analytic Writing" of the Code to students for review. The instructor demonstrates fair use analysis and invites students to offer their rationale for or against fair use on the examples of images under copyright from the first section. The instructor then introduces a spreadsheet tool that can be used to keep track of the images they plan to publish, document their fair use rationale, and hopefully help ease the transition from dissertation to published book. This lesson plan is good for PhD students at any stage of their dissertation writing or for students planning to publish journal articles. The lesson can also be used to highlight visual resource services and/or other local library services from which students may benefit. Be sure to send the students the slide deck with links to tools and resources after the session is over.

LEARNING OBJECTIVES

- Students will understand the basics of copyright and be able to determine the copyright status of a particular image.
- Students will become familiar with the Code and will be able to

define fair use and analyze whether their intended use of an image is considered fair.

- Students will be able to adapt a spreadsheet tool to keep track of image copyright status and their fair use rationale.

MATERIALS

The lesson plan requires a slide deck with relevant copyright tools listed (including Peter Hirtle’s [Chart Detailing Copyright Term in the US](#); Lolly Gasaway’s [Chart When U.S. Works Pass into the Public Domain](#), and the [Digital Slider](#)) and Google Sheets spreadsheet tool to demonstrate and share with students. You may use this publicly available, sharable spreadsheet “[Tracking Images and Fair Use](#)” in your session or adapt it to make your own version. Likewise, the author’s [slide deck](#) is publicly available via Google Slides and you are welcome to use or adapt it as you see fit (for static versions of the spreadsheet and presentation see [appendix 9](#)).

The lesson also relies on examples of images that students are planning to use in their project. Depending on your audience, either solicit examples from students via a Google Form in advance of the session or ask students to come prepared with an example to share with the group. Here is an example of a [Google Form](#) that can be used or adapted if you choose to collect examples in advance of the session.

LESSON PLAN

Introduction and overview of session (5 minutes)

- Ask the students to introduce themselves and briefly describe their writing project

Basics of copyright (5 minutes)

- I start by demonstrating how to determine if something is in the public domain or if its status is copyright protected. Since the concept of fair use does not apply to images that are in the public domain or otherwise available for use through a license, it is important to determine the copyright status of a particular image.
- Define issues of copyfraud and museums claiming restrictions on images that are otherwise in the public domain. Describe open image collections and Creative Commons as well as educational licensing programs such as the Artstor Images for Academic Publishing (IAP) program.
 - Emphasize that if images are in the public domain an image file can be obtained either from a museum (may need to ask permission) or they can scan from a high-quality publication source. A local visual resources center or creative lab should be able to help students by scanning the images they need.
 - Mention to students that they may want to formally request permission even when fair use applies to preserve their relationship with an artist, foundation, or repository. Resources for requesting permission are at the end of the slide deck.

Student examples of copyright analysis (10 minutes)

- Either ask a few students to volunteer an example of an image they are planning to publish in an article or use in their dissertation or select from examples that students submitted before the session. As a group, go over the examples and determine whether something is protected under copyright, demonstrating whatever tools seem most useful for the specific example at hand, for example the [Digital Slider](#).

- You may not need all the tools in the slide deck, but the idea is to have them available if you do. If you send students the slide deck or post the tools on your website students will be aware of them and can pursue them on their own in the future.
Contribute any additional tools you think would be useful for your users.
- Note which images are protected under copyright law to refer to them later in the session

Overview of fair use and discussion of the Code (5 minutes)

- Define fair use; briefly go over the four factors.
- Present section “One: Analytic Writing” A to the group and highlight what the Code covers and what its limitations are.
 - Emphasize how the Code simplifies the four factors and looks at whether or not the use is transformative within a set of best practices.
 - Encourage students to use images that are sized appropriately for their specific use because image size requirements differ for dissertations and publications like journals and books. For the ProQuest PDF dissertation, 72 dpi and 1500 pixels on the long edge should suffice. Most publishers request 300 dpi for printing journals and books. (This information appears at the end of the slide deck if students want to refer to it.)

Student examples of fair use (10 minutes)

- Of the examples the students volunteered earlier, take a couple of the images that were protected by copyright and do a fair use analysis as a group. Allow students to suggest reasons for and

against fair use for each example based on what they've read in the Code.

- Guiding questions could include: Ask the students to explain more about how they will use the image. Will it be published in a journal or will it go in your dissertation? How does the image relate to your argument? Use the concepts from Section One of the Code to aid in the fair use analysis. How do the limitations presented in the Code relate to your use?

Introduce a tool for documenting fair use decisions (5 minutes)

- Discuss rationale for documenting fair use decisions
 - A limitation from Section One of the Code says that a writer employing fair use “should be justified by the analytic objective, and the user should be prepared to articulate that justification.”
 - Substitute your local campus dissertation policy: Our local campus Dissertation Office permits students to include images in their dissertation under fair use and encourages students to keep track of their fair use reasoning.
- I devised a [simple tool in Google Sheets](#) to give students an idea of how they might keep track of their fair use reasoning along with some other logistical information about the images they need for their project, whether it is a dissertation, an article, or another publishing project. This helps meet the fair use guidelines of the Code and provides students with a tool to keep track of their images which may prove helpful for future publishing projects—sometimes years go by before a dissertation gets turned into a book.

- For my fake dissertation project here, I've included examples of a public domain image, a copyrighted image I'm claiming fair use to use, an image that I've decided to request permission for out of courtesy to colleagues at a foundation. You can substitute any examples that are useful for your audience.
- I have grayed out fields that do not need to be filled in. For example, fair use does not apply when images are in the public domain or if students have obtained them through a Creative Commons or other license, such as Artstor IAP.

Other Tips for Using Images (5 minutes)

- Briefly provide other tips for fair use of images, including size, resolution, and accuracy, which are other limitations in Section One of the Code.
 - A possible resource to include: If the software is available for student use, Adobe Photoshop Lightroom is helpful for batch resizing of images.
- Include a slide with resources for requesting permission in case a student opts to obtain permission rather than rely on fair use.

Conclusion

- Ask for any remaining student questions or reflections.

REFLECTION ESSAY

This lesson and the spreadsheet tool grew out of copyright consultations with individuals and other informal presentations given to smaller groups of graduate students in the art history department. It was codified into a larger group presentation for advanced history PhD graduate students in February 2016. Whether I use the structure

of the lesson with a group or an individual, the experience is always different because it depends on the images that students are using in their own work. There is a risk that students won't want to share examples of images they're using in a group setting, but I have not encountered that problem when presenting to groups of PhD students—they have been eager to offer their examples for the group to consider and their active participation makes the experience more meaningful.

Using examples from students rather than preparing examples in advance could be considered another risk because you might not know the answer right away. However, populating your slide deck with a variety of copyright and fair use tools and resources will allow you to talk through any question together. The slide deck can then be sent to attendees after the lesson and students appreciate having the complete set of resources for future use. Similarly, giving students access to the spreadsheet tool can serve as an example for what they might want to do for their own project. I make sure to emphasize that they only need to take the parts that are useful to them and their workflow. Nothing is mandatory or required, it's just an idea to help articulate fair use rationale per the Code's advice. It also serves the purpose of keeping track of other administrative information and files that other students and faculty have told me are problematic if they're not planning to publish their writing for a few years.

At the end of the session, I make sure to provide tips and other information about using images fairly since the Code includes limitations about the size, resolution, and accuracy of images. This is a great opportunity to plug local visual resources services that are available to students, such as the creation of high-quality digital images that would be accurate, sized appropriately, and cataloged with the cor-

rect citation information. I also include some resources for requesting permission if a student decides that is required for their project.

12

Intellectual Property for Visual Resources: A Student Centered Case Study Approach

Meredith Wisner

Intended Audience: Upper-division undergraduates in art history, ideally in courses that require students to publish their work on the web

Session Length: 1-1.5 hours, with a short assignment that precedes the session

Code Section: Analytic writing

ACRL Frames: Authority is constructed and contextual, Information has value, Scholarship as conversation

ABSTRACT

This lesson plan teaches students the fundamentals of copyright, fair use, and permissions using a case study as a platform to discuss how to find rights information for reproductions of works of art, and the variety of challenges they might encounter. The lesson works best for art history students working on a digital humanities project that includes publishing to the web, although it could also be adapted for students publishing in other formats. The focus of this lesson concerns reproductions of two- and three-dimensional works of art or craft, but it could also be expanded to cover reproductions of archival material or the host of copyright issues surrounding born-digital works.

LEARNING OBJECTIVES:

- Students will come to identify their projects as a form of scholarly publishing in order to recognize themselves as entering a public scholarly conversation
- Students will evaluate sources of visual information for their authority and reliability in order to find accurate rights information and high quality reproductions for their projects in compliance with CAA guidelines
- Students will think critically about the principles of fair use in order to apply those principles when assessing their own use of copyrighted materials
- Students will learn the elements of a formal permissions letter in order to confidently ask permission for copyrighted materials they wish to use outside of fair use
- Students will learn to consider implicit bias in copyright law,

institutional copyfraud and the ways in which they can agitate against these systems

MATERIALS

- Instructional videos on copyright, fair use, visual resources, and citations basics for text and visual resources
- Slide presentation (see [appendix 10](#))
- Library guide
- Handout: quick guide to copyright and fair use

LESSON PLAN

Preparation

This lesson plan requires that students come to the session with a basic understanding of copyright, fair use, and how these concepts operate when working with visual resources, primarily those sourced from cultural institutions. The session takes a flipped-classroom approach by using a pre-assignment that covers these concepts. Ideally this allows for a higher level of discussion on the practical aspects of applying fair use and gaining permission for copyrighted work.

Because this session is heavily reliant on a sample case study that uses a series of interrelated reproductions, it is important to choose images that illustrate a wide variety of issues that students might encounter as they make selections for their own projects. As an example, one might choose sample images for a case study by using reproductions found in collections within and outside the United States through simple browser searches, in Wikimedia Commons, or at institutions who have taken an open approach to their public domain collections. Although this session relies on live searching and discussion, slides are

used to reinforce ideas, increase accessibility for visual learners, and to provide a back-up should a technical problem arise.

Pre-assignment

Prior to class, select videos for students to watch that cover copyright, fair use, using visual resources, and citing sources (including image captioning). Provide questions for students to encourage active viewing. The questions work best when salient to the particulars of the session, and should be woven into the discussion during the session itself. Examples might be:

- Can we use a work of art that is still under copyright as long as we cite it?
- How does the fair use clause work?
- What do museum databases offer that Google Image Search does not?

Copyright and Fair Use (15 minutes)

Welcome students, and state the objectives for the session. Ask them questions about where they are in the process of image gathering for the course. Introduce yourself and your personal and professional experiences with copyright.

Ask students the ways in which they encounter copyright law in their own scholarship. Draw parallels between their work and that of professionals in their field. Discuss the ways traditional modes of scholarly publishing marginalizes younger voices, voices of women, queer folks, folks of color and other marginalized communities.¹

Discuss citations as a patriarchal construct, but one required in order to engage in traditional forms of scholarship. Acknowledge its place

in tamping down the perspectives of marginalized communities, but note its value as a way to visualize a scholarly conversation and offer attribution.²

Discuss the limitations of copyright protection, its variability around the world, and that the U.S. fair use doctrine applies only to scholarship in United States. Discuss how the fair use doctrine works and how it functions to help scholars determine if and how they can use copyrighted materials legally.³ Ask students if providing attribution for copyrighted works protects them from violating copyright: discuss further if necessary.

Publishing and Web Publishing (10 minutes)

Introduce the web as a site of varying behaviors when it comes to copyright. Explain that we might share an image on social media without attribution, but then also write a Wikipedia article using the same image and provide a full citation. Information conveyed in different contexts is shared and appreciated differently.

Ask students to define their projects' target audience. Using ideas from the previous discussion, ask what the expectations might be for their work. Point them to the library guide as a resource they can consult as their projects move forward, and offer one-on-one guidance should they need it. Cite the library as a source for information on intellectual property.

Discuss *Code of Best Practices in Fair Use for the Visual Arts* as a source for guidance about how to be a good actor when navigating copyright as a scholar in the arts. Discuss its creation, and how it considers, specifically, the needs of scholars writing about art.⁴

Case Study: Putting Principle into Practice (15 Minutes)

Using a reproduction of a work of art, ask students where they would go to find images to support their work. Demo a Google Image search for your selected image as an example of a common technique for finding visual images. Show students the array of images in any Google Image search, and ask them to consider challenges in meeting the requirements of the Code. For example, how do we locate reliable citation information within the array of websites represented in this search? How do we determine which images are accurate representations when confronted with so many versions? What is meant by “high quality” and how can we determine this using Google Image searching? Demonstrate tools like sorting by size, and the Usage Rights tool and discuss the reliability of that information.

Navigate to the institution that owns the artwork in the image you selected and lead a discussion about the pros and cons of using an institution’s collections database over sites like Google Image search. Show students how to find rights information for the image. If the image comes from a collection in a foreign country, use this as an opportunity to reinforce fair use as a US doctrine, and that it does not necessarily cover works from other countries. Discuss the Berne Convention. If the image is of an artwork that has entered the public domain, discuss how copyright operates for the work as opposed to its reproduction.

If the image is also reproduced in Wikimedia Commons, pull up the rights information provided in the Commons. Discuss Wikipedia as an open, collaborative platform, including its benefits and drawbacks. Discuss the *Bridgeman Art Library, Ltd. v. Corel Corp.* case and how in the US reproductions of two-dimensional works of art are not protected by copyright, while three-dimensional images are.⁵ Images

in Wikimedia Commons use this case law to support their own fair use claims. Use this as an opportunity to discuss using images found via Wikimedia Commons. Ask them to consider what factors might inform this decision. If you've used an image from Wikimedia in your presentation point that out and discuss risks involved.

Discuss the proliferation of “no photography” signs in museums, and efforts by cultural institutions to control the access to reproductions of objects in their collections.⁶ Cover the museum/scholar relationship as a reason this kind of “copyfraud” is perpetuated.⁷

Navigate to an institution that participates in the [openGLAM](#) movement. Demonstrate how their collection databases differ from institutions that lock down their public domain images. Note how they provide clear rights information and contrast this with the confusing legal jargon used on other sites. Also show how these same institutions treat objects that are still protected by copyright.

Permissions (10 Minutes)

Discuss with student when it is necessary to ask permission to use copyrighted material, and strategies for locating a copyright holder's identity. Describe the elements that go into writing a successful permissions letter. These including describing who you are and why you are making a request to use the copyright holder's work, how much of the work you intend to use, how you intend to use it, and the extent of the use itself. Note that extent means both the duration of the use (for a limited time up to perpetual use), as well as the extent of the audience reached.⁸ Discuss with the class how fair use might be weighed differently in different contexts (classroom, scholarly publishing, and commercial publishing).

Intellectual Property Laws and Inequality (10 Minutes)

Conclude with an introduction to the inequities of copyright law across disciplines, and how intellectual property laws often fail to protect the creative output of women and minorities. For example, dressmaking as a discipline has been historically made up of women (and women of color). The fashion industry, as late as 2015, has endured weak copyright protections stemming from the view that dressmaking is more craft than art. Improvisational forms of music like jazz, while innovated by African Americans, was and is appropriated by white musicians who then “fix” the work in recorded medium thereby appropriating the work (recording being cost prohibitive step for many).⁹

Address how copyright protections in the US have expanded to protect corporations at the expense of individual creative and intellectual expression. Identify CAA’s *Code of Best Practices in Fair Use for the Visual Arts* and the assertion of fair use as a means to navigate power imbalances and challenge structures of inequity within the arts.

If students were asked to sign a waiver for their course that releases their copyright to the college or university, ask them how they feel about this. Draw comparisons to scholars signing similar waivers when publishing through traditional channels, and encourage them to challenge those requirements where possible.

Introduce students to Creative Commons as a means to fine-tune the control they have over their creative work, while allowing others to more freely engage with their ideas.

REFLECTION

This session arose out of a need to support the intellectual property

requirements for grant-funded digital scholarship courses at Barnard College. The Library, in partnership with its Instructional Media and Technology department (IMATS), saw this need as an opportunity to create instruction sessions on intellectual property that were tailored to specific courses, and also prepare students to navigate intellectual property (IP) in their future careers. This session was given as part of a series of labs offering students practical skills for developing digital humanities projects. Along with this lab I also taught a workshop on the collaborative use of Zotero citation management software.

Recognizing the impossibility of covering the entirety of intellectual property law in a single one-hour session, my approach for this course was to develop a case study that would take students through the process of finding images that suited the goals of their projects. The session is designed to center the students' experience through facilitated discussion that circles the conversation back to their own varying levels of knowledge. This feminist approach to instruction is informed by the work and writing of Maria T. Accardi and her book *Feminist Pedagogy for Library Instruction*.¹⁰

Given additional time, a more effective way to empower students would be to introduce a follow-up workshop that offers opportunities for students to share their fair use and permissions questions with peers, and to collaboratively discuss solutions to those challenges in a facilitated environment. In future iterations of this class I would also point to the obvious inequity on display within each of my examples, noting the subjects shown as being members of a certain ethnicity and/or class (as two examples), and the events depicted as marked by symbols of privilege. We might interrogate as a class how bias is transmitted through these works, and how the intended audience of the works could impact meaning.

I also aimed to reframe the discussion around citation away from crime and punishment and toward the activity as a means to convey one's place in a given scholarly conversation through collegial attribution. Kevin Seeber's "The Failed Pedagogy of Punishment" helped clarify my thinking here.¹¹

Finally, throughout the development of this session I became increasingly interested in the inequities inherent to copyright law. Copyright, as having arisen from the same patriarchal social structure that created the constructs of race and gender, is an important lens through which to interrogate IP, and one I hope to more thoroughly cover in future iterations of this session. I think this topic, while important for all students working with issues related to IP, is particularly critical for students researching connoisseurship, the development of guilds, the so-called "lesser arts," and the artistic work of women artists, people of color, and other marginalized communities.

REFERENCES

1. Maria T. Accardi, *Feminist Pedagogy for Library Instruction* (Sacramento, CA: Library Juice Press, 2016), 24 – 25
2. Accardi, 10, 24 – 25.
3. Susan Bielstein, "What is Copyright?" and "Fair Use," in *Permissions, A Survival Guide: Blunt Talk about Intellectual Property* (Chicago: University of Chicago Press, 2006), 12-34; 79-100. (Summer 2012), 806 – 816; April Hathcock, "Copyright," *New York University Libraries*, last modified March 27, 2018. <https://guides.nyu.edu/c.php?g=276785&p=1845968>.
4. College Art Association, *Code of Best Practices in Fair Use for the Visual Arts*. (2015), 1 – 19.
5. Bielstein, 42 – 43.

6. Kenneth D. Crews, "Museum Policies and Art Images: Conflicting Objectives and Copyright Overreaching," *Fordham Intellectual Property Media and Entertainment Law Journal* 22, no. 4 (Summer 2012): 806 – 816.
7. Jason Mazzone, "Copyfraud," *New York University Law Review* 81, no. 3 (2006): 1026.
8. Kenneth D. Crews, "Asking for Permission," *Columbia University Libraries, Copyright Advisory Office*, retrieved on April 20, 2018. <https://copyright.columbia.edu/basics/permissions-and-licensing.html>.
9. Kevin J. Greene, "Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues," *American University Journal of Gender, Social Policy & the Law* 16 no. 3 (2008): 370-374.
10. Accardi, 23 – 69.
11. Kevin P Seeber, "The Failed Pedagogy of Punishment: Moving Discussions of Plagiarism beyond Detection and Discipline," *Critical Library Pedagogy Handbook, Volume 1*, eds. Kelly McElroy & Nicole Pagowsky (Chicago: Association of College and Research Libraries, 2016), 131 – 138.

Appendix 1: Understanding Fair Use Through Concept Mapping

ASSIGNMENT SHEET

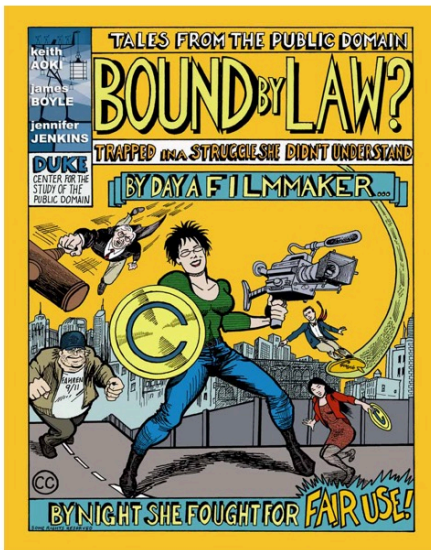
Understand Fair Use through Concept Mapping
Appropriation Art Assignment
Associate Professor Leslie Worrell Christianson
Assistant Professor Amanda Avery

1. Select an original work on which you would like to base your own work. You may use any medium.
2. Cite the source work using Chicago style¹
3. Decide what elements you would like to appropriate from the original work and perform a Concept Map on the original.
4. Create your own transformative or appropriative work of art based on the source work.
5. Apply what we have learned in class from our discussion and examples about the concepts of transformative use, fair use, and ethical appropriation to create a work that you will present and defend to the class as “fair” or “transformative.” It may be a good idea to Concept Map your final work to note elements that serve as evidence of your ethical use of the source work—for example: *this is a parody element*, etc.

¹ Dickinson College. “Citing Images in Chicago Style,” *Art & Art History LibGuide*, last modified August 9, 2017, <http://libguides.dickinson.edu/art>.

Appendix 2: Copyright, Fair Use, and Art Making

PRESENTATION



**Copyright,
Fair Use, and
Art Making**

<http://www.thepublicdomain.org/wp-content/uploads/2009/04/bound-by-law-duke-edition.pdf>

WELL, MANY WORKS PUBLISHED BETWEEN 1923 AND 1977 ARE IN THE PUBLIC DOMAIN BECAUSE THE AUTHORS DID NOT COMPLY WITH NOTICE, RENEWAL OR OTHER FORMALITIES.

BUT TRYING TO TRACK DOWN THIS INFORMATION CAN BE TIME-CONSUMING AND FRUITLESS, SO ARTISTS OFTEN HAVE TO PRESUME THESE WORKS ARE COPYRIGHTED.

DATE OF WORK	PROTECTED FROM
CREATED 1-1-78 OR AFTER *	WHEN THE WORK IS FIXED IN A TANGIBLE MEDIUM OF EXPRESSION
PUBLISHED BEFORE 1923	IN PUBLIC DOMAIN
PUBLISHED FROM 1923 TO 1963	WHEN PUBLISHED WITH NOTICE (WORKS PUBLISHED WITHOUT NOTICE ARE IN THE PUBLIC DOMAIN)
PUBLISHED FROM 1964 TO 1977	WHEN PUBLISHED WITH NOTICE (WORKS PUBLISHED WITHOUT NOTICE ARE IN THE PUBLIC DOMAIN)
CREATED BEFORE 1-1-78 BUT NOT PUBLISHED	1-1-78 (THE EFFECTIVE DATE OF THE 1976 COPYRIGHT ACT)
CREATED BEFORE 1-1-78 BUT PUBLISHED BETWEEN THEN AND 12-31-2002	1-1-78
CREATED BEFORE 1-1-78 AND PUBLISHED AFTER 12-31-2002	1-1-78

*WORKS PUBLISHED WITHOUT NOTICE BETWEEN 1-1-78 AND 3-1-89 RETAINED COPYRIGHT ONLY IF THE OMISSION OF NOTICE WAS CORRECTED.

Copyright Duration in the U.S.

<http://www.thepublicdomain.org/wp-content/uploads/2009/04/bound-by-law-duke-edition.pdf>



Public Domain

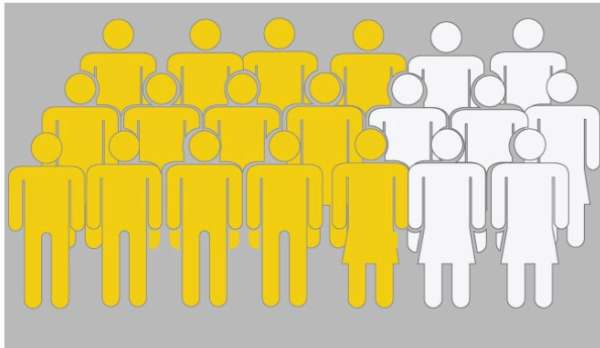
- Work created before 1923 or whose copyright has expired
- Work produced by the U.S. government
- Facts, ideas, discoveries, or other non-protectable work

Fair Use Four Factors:

Non-infringing, unauthorized use of copyrighted material, under some circumstances

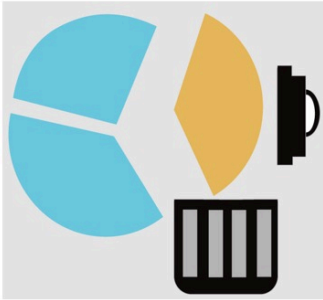
- Purpose of the use
- Nature of the copyrighted material
- Amount used
- Effect on the market

WHY Fair Use MATTERS: 2014 CAA ISSUES REPORT



70% of respondents say they use copyrighted material in doing their own work

CAA Report



1/3 of the visual-arts community have avoided or abandoned work because of copyright concerns

<http://www.collegeart.org/pdf/FairUseIssuesReport.pdf>



Funded by the Andrew W. Mellon Foundation
Additional support provided by the Samuel H. Kress Foundation

Available at:
collegeart.org/fair-use
cmsimpact.org/fair-use

Code of Best Practices
in Fair Use for the Visual Arts

FOR EACH SITUATION IN THE CODE:

Description

Principle

Limitations

Code of Best Practices
in Fair Use for the Visual Arts

Section three: Making Art

- **Principle:**

- Artists may invoke fair use to incorporate copyrighted material into new artworks in any medium

- **Limitations:**

- Avoid uses that do not generate new meaning
- Be able to explain the rationales for repurposing copyrighted works (whether in part or in whole) and the extent of the use
- Avoid suggesting that the incorporated elements are original
- Cite the source



Prince: *Canal Zone Series*



Cariou v. Prince

Further discussion on the case

- What is your personal opinion about the case?
- Could Prince have strengthened his fair use argument had he used fewer images or partial images of Cariou's photos?
- Would it have helped if Prince had explained his artistic objective for using Cariou's photos?
- Would giving proper credit to Cariou make a difference?

Reflections

- How have you used copyrighted material in your own artwork?
- Is it fair use? Would you consider it best practice?
- What would you have done differently? How might it have affected your work?

Assignment

- You are expected to create an artwork that incorporates copyrighted material in a transformative manner. It can be any medium.
- Write a one page fair use rationale for your work, using the *CAA Code*.
- Present your work to the class and explain your use of the copyrighted material.

Appendix 3: Zines, appropriation, and the art library as studio space

PRESENTATION

Copyright Infringement v. Fair Use

Appropriation

1. The making of a thing private property, whether another's or (as now commonly) one's own; taking as one's own or to one's own use; *concr.* the thing so appropriated or taken possession of.

Appropriation

Art (orig. *U.S.*). The practice or technique of reworking the images or styles contained in earlier works of art, esp. (in later use) in order to provoke critical re-evaluation of well-known pieces by presenting them in new contexts, or to challenge notions of individual creativity or authenticity in art.

- 1895 J. La Farge *Considerations on Painting* vi. 208 Confusion in the work of art of methods belonging to different memorial systems...—a blot in the logical balanced world of art, usually brought about by appropriation of the works of others.
- 1908 F. Simmonds & G. W. Chrystal tr. J. Meier-Graefe *Mod. Art* I. ii. 227 Géricault was familiar with Goya's pictures... Courbet gave the determining impulse, when he brought about a new and rich development by the resolute appropriation of the Spaniards.
- 1960 E. Panofsky *Renaissance & Renascences in Western Art* (1969) iv. 170 The main group of Donatello's relief...derives from a Pentheus sarcophagus...: the appropriation of a representational type for a purpose diametrically opposed to its original significance.
- 1985 *Arts Mag.* Dec. 106/1 Art appropriation continues, and painters, sculptors, and architects who borrow from previous styles or images thus comment on contemporary issues in the arts.
- 1997 *Buffalo* (N.Y.) *News* (Nexis) 25 May 66 Russell Connor's 'The Kidnapping of Modern Art by the New Yorkers'...is a witty, nicely painted merger of Rubens' 'The Rape of the Daughters of Leucippus' and Picasso's 'Les demoiselles d'Avignon'. But it is also a strained contrivance, a painting hamstrung and harried by the endless possibilities of appropriation.

**College Art Association's Code of Best Practices
in Fair Use for the Visual Arts**

Fair use can be applied consistently based on logical principles grounded in factual contexts. The Code describes an approach to reasoning about the application of fair use to issues both familiar and emergent. It does not provide rules of thumb, bright-line rules, or other decision-making shortcuts. For instance, it does not prescribe a uniform size or resolution for digital images that might be appropriate for all online uses. Rather, it calls on a user to consider context in deciding what image size should be employed for any new use, in light of the user's professional goals and other considerations.

<http://www.collegeart.org/pdf/fair-use/best-practices-fair-use-visual-arts.pdf>

Rogers v. Koons 1992



Puppies by Art Rogers; String of Puppies by Jeff Koons

Blanch v. Koons 2006



Silk Sandals by Gucci
photograph by Andrea Blanch
featured in *Allure* magazine



Niagara by Jeff Koons 2000

Sobel v. Eggleston 2012



WILLIAM EGGLESTON (B. 1939)
Memphis, 1969-1970
dye transfer print
15 15/16 x 19 15/16 inches
© Eggleston Artistic Trust. Courtesy Cheim
& Read, New York.



WILLIAM EGGLESTON (B. 1939)
Untitled, 1970
pigment print
signed in ink and Eggleston Artistic Trust
copyright reproduction limitation on label affixed
(on the reverse of the mount);
number 1 from an edition of 2
44 x 60in. (112 x 152cm.) ([via christies.com](http://viachristies.com))

Cariou v. Prince 2013



Cariou photograph from *Yes, Rasta* 2000 on left; Prince's painting from *Canal Zone* 2008 on right

Appendix 4: Copyright and Fair Use for Graduating Studio Art Majors

CASE STUDIES WORKSHEET

Copyright Case Studies

Case #1: Daniel Morel vs Agence France-Press/Getty Images

Case #2: Damien Hirst vs Cartrain

Case #3: Shepard Fairey vs Mannie Garcia

Case #4: Rogers vs Koons AND Blanch vs Koons (*compare results*)

In your groups, use web research to learn the basics about this case. Be prepared to share this information with the class, along with your group's opinions on the dispute. Also, locate samples of artwork to share with the class that highlight the case.

Questions to Explore

What are the basic facts of the case?

What are the positions/perspectives of the two people/organizations in the case?

Does your group agree more with one party over the other with regards to their perspective on copyright and the ethics of appropriation? Or are you divided? If there was a court case, do you agree with the decision?

How does the CAA Code of Best Practices in Fair Use inform your decisions about this case?

COPYRIGHT BASICS HANDOUT

Copyright Basics

What is copyright and why does it exist?

- It provides a financial incentive for creators to create by giving them a limited monopoly on their creations.
- It allows for the flourishing of culture and ideas.

How do you get copyright?

- Automatically! As soon as you create something, it is under copyright.
- Registering a work with the US Copyright Office gives added weight to your copyright, particularly in a court of law. (copyright.gov)
- Exceptions (work done for the government, work done “for hire”)
- It lasts the life of the artist plus 70 years.
- You retain most copyright even when selling your work.

Rights Received Under Copyright

1. Make copies
2. Make derivative works
3. Distribution
4. Perform Publicly
5. Display
6. Make digital audio transmissions

Artists' Moral Rights

- Visual Artists Rights Act (17 US Code 106A)
- Right for a work to be accurately attributed to you
- Right to prevent the “distortion, mutilation, or other modification” of your work

Fair Use - cases in which you are allowed to use copyrighted materials without the permission of the copyright holder. It is determined by a balance of the following “four factors”:

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
4. The effect of the use upon the potential market for, or value of, the copyrighted work.

CAA Code of Best Practices in Fair Use for the Visual Arts: Making Art (pg 11)

Principle: Artists may invoke fair use to incorporate copyrighted material into new artworks in any medium, subject to certain limitations:

Limitations

- Artists should avoid uses of existing copyrighted material that do not generate new artistic meaning, being aware that a change of medium, without more, may not meet this standard.
- The use of a preexisting work, whether in part or in whole, should be justified by the artistic objective, and artists who deliberately repurpose copyrighted works should be prepared to explain their rationales both for doing so and for the extent of their uses.
- Artists should avoid suggesting that incorporated elements are original to them, unless that suggestion is integral to the meaning of the new work.
- When copying another's work, an artist should cite the source, whether in the new work or elsewhere (by means such as labeling or embedding), unless there is an articulable aesthetic basis for not doing so.

Resources

College Art Association - Fair Use

<http://www.collegeart.org/programs/caa-fair-use>

PRESENTATION

What is copyright? Why does it exist?

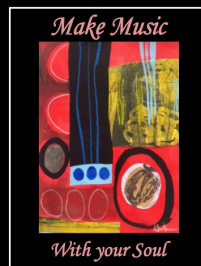
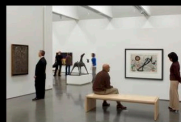
- It provides a financial incentive for creators to create, by giving them a limited monopoly on their creations.
- It allows for the flourishing of culture and ideas.

How do you get copyright?

- Automatically! As soon as you create something, it is under copyright.
- Registering a work with the US Copyright Office gives added weight to your copyright, particularly in a court of law. (copyright.gov)
- Exceptions (work done for the government, work done “for hire”)
- It lasts the life of the artist plus 70 years.
- You retain most copyright even when selling your work.

What Rights do you get under copyright?

1. Make copies
2. Make Derivative Works
3. Distribution
4. Perform Publically
5. Display
6. Digital Audio Transmissions



Cheesy poster based on work by
Jennifer Gardiner, Hope College
theninesgallery.com

Artists' Moral Rights

- Visual Artists Rights Act (17 US Code 106A)
- You have the right for a work to be accurately attributed to you.
- You have the right to prevent the "distortion, mutilation, or other modification" of your work in a way that compromises your reputation.

Fair Use - Four Factors

#1 - The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes.



Art lecture, Muscarelle Museum of Art, muscarelle.org



Picasso mug, mpbshop.com

Rauschenberg and Beebe



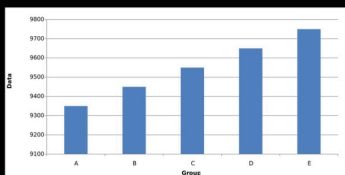
Morton Beebe, Mexico Diver, 1970
www.mortonbeebe.com



Robert Rauschenberg, Pull (Hoarfrost Series), 1974
www.mortonbeebe.com

Fair Use - Four Factors

#2 - The nature of the copyrighted work.



Picasso, Les Femmes d'Alger (O.J.), 1907

Fair Use - Four Factors

#3 - The amount and substantiality of the portion used in relation to the copyrighted work as a whole.



Chuck Close, Eric, 1990
colmiquetoast.blogspot.com



Fair Use - Four Factors

#4 - The effect of the use upon the potential market for, or value of, the copyrighted work.



CAA Code of Best Practices in Fair Use (2015) Making Art:

Principle: Artists may invoke fair use to incorporate copyrighted material into new artworks in any medium, subject to certain limitations:

- The use must generate new artistic meaning, and the artist must be prepared to explain the reasons behind their use.
- Artists should do nothing to imply that the original work is theirs.
- They should cite their source in some way, unless there is an artistic reason for not doing so.

Questions to ask:

- Is the use "transformative"? Just of change of medium doesn't count!
- Is the artist using an appropriate amount of the original for their needs?

Appendix 4: Copyright and Fair Use for Graduating Studio Art Majors



Cubi XXVII, 1965, by David Smith, stainless steel, measuring 111-3/8 by 67-3/4 by 34 in. It is located at the Solomon R. Guggenheim Museum, New York. Photograph by David Heald. ©Estate of David Smith/Licensed by VAGA, New York.



Cloud on my single-mindedness (Cubi XXVII) 2012, by Lauren Clay, acrylic and paper, measuring 30 by 24 by 12 in.



Grounds for Sculpture, 2016 exhibit
Lauren Clay, Driahli



Photograph by Patrick Cariou from his book *Yes Rasta* (2000)



Work by Richard Prince from his *Canal Zone* series (2008, powerHouse Books)



David Dodde, *Fleurs et rivière*, 2013 (artprize.org)

Patricia Caulfield and Andy Warhol



Patricia Caulfield, for *Modern Photography*, 1964
(warholssays.tumblr.com)



Andy Warhol, *Flower Series*, 1964
(warholssays.tumblr.com)

Additional Perspectives

"[Warhol] was very innocent of doing a disservice to this photographer because this photograph was not what you might call a 'remarkable photograph.' It was not an earthshaking photograph, but Warhol made a remarkable series of paintings out of it... they were totally successful, and we sold them all!" -- Ivan Karp

"Warhol had found the original photo in a woman's magazine; it had won a second prize in a contest for the best snapshot taken by a housewife." -- Ranier Crone

"The reason there's a legal issue here is because there's a moral one. What's irritating is to have someone like an image enough to use it, but then denigrate the original talent."
-- Patricia Caulfield

What place does gender, class, and any perceived hierarchy of artistic genres play in this discussion?


Law vs Ethics

Is there a place where law and ethics diverge?

What do you think is an *ethical* engagement with another artist's work vs a *legal* one? Does it matter?

Appendix 5: Economics, Morality, and Artistic Rights

PRESENTATION

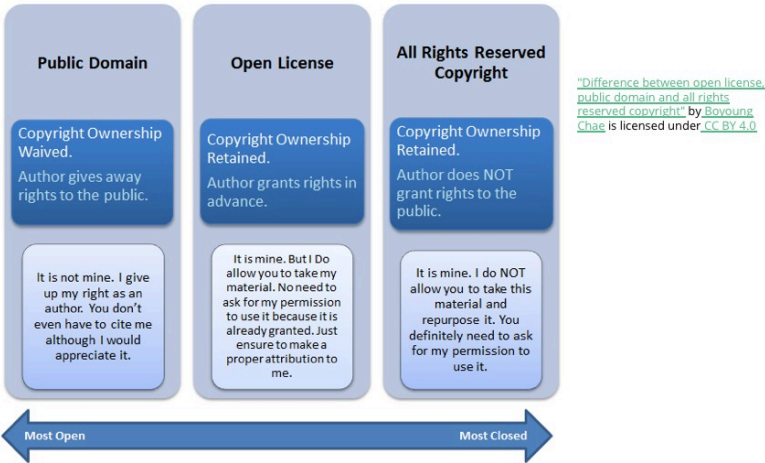


Economics,
Morality, and
Artistic Rights

Impact of Visual Communication

Think about a time when your understanding of an event, issue, or concept changed after you encountered a visual.

What was it about the added visual that changed or influenced your understanding?





Permissions, Copyright, and Ownership







Public Domain

- Works in the public domain are **not protected by copyright**.
 - The copyright for the work might have expired.
 - There never was a copyright to begin with.
 - The work was created by the US Government.
-

Creative Commons/Open License

- Open licenses enable creators to proactively grant certain rights **in advance**, while still **retaining copyright**.

Icons	License	Guidelines
	BY	Attribution: Others can copy, distribute, perform and remix your work if they credit your name as specified by you.
	ND	No Derivatives Works: Others can only copy, distribute, or perform verbatim copies of your work.
	SA	Share Alike: Others can distribute your work only under a license identical to the one you have chosen for your work.
	NC	Non-commercial: Others can copy, distribute, display, perform or remix your work but for non-commercial purposes only.

Copyright

What is copyright?

Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works.

What does copyright protect?

Copyright, a form of intellectual property law, protects original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture. Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed.

Fair Use

“Fair use is a copyright principle based on the belief that the public is entitled to freely use portions of copyrighted materials for purposes of commentary and criticism” ([“Fair Use Overview,” Stanford University Libraries](#)).

Basically, fair use helps guide **limited usage of copyrighted material** so that you are not subject to copyright infringement.

4 Factors of Fair Use

1. the purpose and character of your use
2. the nature of the copyrighted work
3. the amount and substantiality of the portion taken
4. the effect of the use upon the potential market

Is it **TRANSFORMATIVE**?

Examples

Not a fair use. The U.S. Postal Service (USPS) licensed the use of a photograph of the Korean War veterans' memorial sculpture for a postage stamp, but **failed to obtain permission from the sculptor who held copyright in the underlying three-dimensional work**. The U.S. Court of Appeals for the Federal Circuit held that the use of the underlying sculpture depicted in the photograph was not permitted under fair use principles.

Important factors: It was not enough to transfer the work from three dimensions to two dimensions (despite the creative use of photography and snow in conjunction with the photos). (*Gaylord v. United States*, 595 F.3d 1364 (Fed. Cir. 2010).)

Examples

Fair use. A search engine's practice of creating small reproductions ("thumbnails") of images and placing them on its own website (known as "inlining") did not undermine the potential market for the sale or licensing of those images.

Important factors: The thumbnails were much smaller and of much poorer quality than the original photos and served to help the public access the images by indexing them. (*Kelly v. Arriba-Soft*, 336 F.3d. 811 (9th Cir. 2003).)

Visual Artists Rights Act (VARA) (1990)

Notable for being the first piece of legislation to protect the **moral** rights of artists.

Under VARA, authors of visual arts have rights of “attribution and integrity” which allow them to “prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation.”

VARA also protects artists from being falsely represented as the creator of something.

Case Studies

Charging Bull & Fearless Girl



"Fearless Girl Statue by Kristen Visbal New York City Wall Street" by [Anthony Quintano](#) is licensed under [CC BY 4.0](#)

A little background on both statues:

"Charging Bull"

- Created by Arturo Di Modica
- Originally installed in December 1989 in front of the New York Stock Exchange without a city permit ("guerilla art"). Di Modica says he was inspired to create the statue after the stock market crash in 1987 to represent "the strength and power of the American people."
- NYSE originally had statue removed.
- Several days later, NYC relocated the statue to its current home in Bowling Green Park.
- Di Modica has since trademarked and copyrighted his statue.

"Fearless Girl"

- Created by Kristen Visbal
- Commissioned by State Street Global Advisors (an investment firm).
- Installed, facing the Charging Bull statue, before International Women's Day in March.
- Original plaque w/ the statue said "Know the power of women in leadership. SHE makes a difference." March also marked the 1st anniversary of SSGA's Gender Diversity Index, which invests in companies w/ higher gender diversity in leadership positions. The NASDAQ ticker symbol for the fund is also SHE.
- After the statue was added to the NYC public art project, the statue got a new plaque, saying: "Fearless Girl was placed in New York City's Financial District, in honor of International Women's Day 2017, to celebrate the importance of having greater gender diversity in corporate boards and in company leadership positions. She also stands as an inspiration for the next generation of women leaders"—presented by the New York City Department of Transportation Art Program and State Street Global Advisors"

Talk About It

- While VARA does not apply to artworks created before 1990, we can still consider whether Di Modica would have a claim to say that his work has been unfairly modified by the addition of Fearless Girl. In small groups, take 5-10 minutes to explore some additional commentary about the two statues, and decide if you think VARA applies.
 - The addition of "Sketchy Dog"/"Pissing Pug": In May 2017, several months after Fearless Girl was placed in front of Charging Bull, New York artist Alex Gardega added his own voice to the artistic conversation with a small statue of a peeing dog, placed such that it appears to be urinating on the leg of Fearless Girl.
 - Gardega, speaking to the Washington Post: "The logic explains itself....The dog invading her space is reflective of her invading the space that belongs to the bull. I happen to know someone who knows the artist who made the bull, and so I know what he put into that work....He dropped about \$350,000 of his own money into the sculpture, and 'Fearless Girl' statue changes the meaning."
(https://www.washingtonpost.com/news/post-nation/wp/2017/05/30/pissing-pug-pops-up-beside-fearless-girl-as-battle-of-wall-street-statues-continues/?utm_term=.df0d04eba1226)
-

Frank Ocean's T-Shirt

A little background:

- Frank Ocean performs at the Panorama Festival on July 28, 2017.
- He wears a shirt with the words "Why be racist, sexist, homophobic, or transphobic when you could just be quiet?"
- The shirt is sold by Green Box Shop, operated by 18-year-old Kayla Robinson. After images of Frank Ocean performing in the shirt spread, the shop experienced a sales surge.
- The shirt's slogan originated from a 2015 tweet from Brandon Male.
- After he (and others) pointed out that his words were being used, uncredited, to make money, Male and Robinson set up a time to discuss potential compensation.

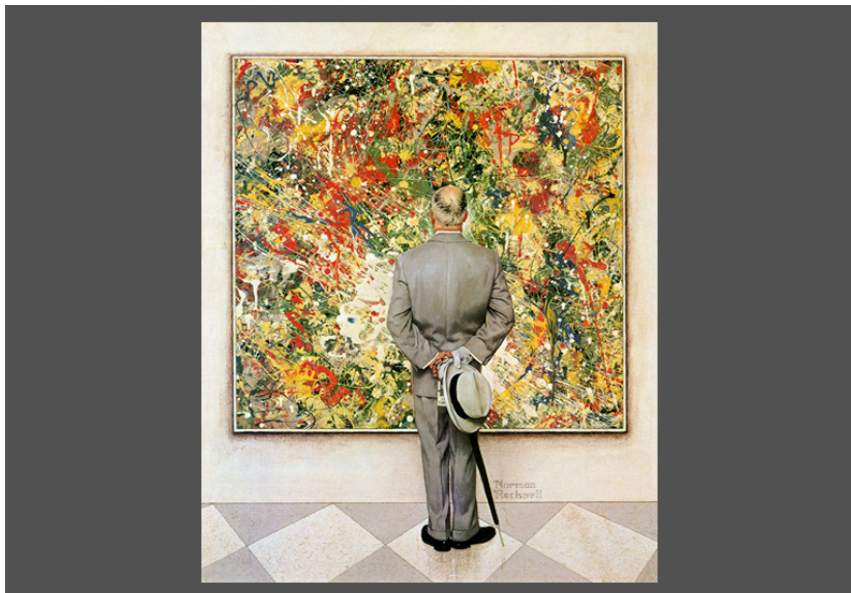


Talk About It

- Are tweets a fixed expression? Should they be subject to copyright protections?
- From Vogue Magazine: "Policing copyright and intellectual property laws is always the right thing to do. But in this case, the sentiment behind the statement seems to have gotten lost in the noise....This is where the focus should be, on a brave young kid who stood up for himself and for others like him. And the fact that Robinson wanted to print his words and promote them, even for a small profit—what's so wrong with that?" (<http://www.vogue.com/article/fashion-runway-frank-ocean-t-shirt-panorama-brandon-male-twitter>)

Appendix 6: Copyright and Fair Use Instruction for Art and Design Students

EXAMPLES



EXAMPLE #1: What is (and isn't) copyrightable. Norman Rockwell's "The Connoisseur," a cover illustration for the January 13, 1962 issue of the *Saturday Evening Post*, shows us a middle-aged man looking at what appears to be one of Jackson Pollock's Abstract Expressionist "drip paintings." But Rockwell skillfully synthesized familiar aspects of Pollock's "signature style," creating his own Pollock-style knock-off without infringing the copyright in any of Pollock's actual works.



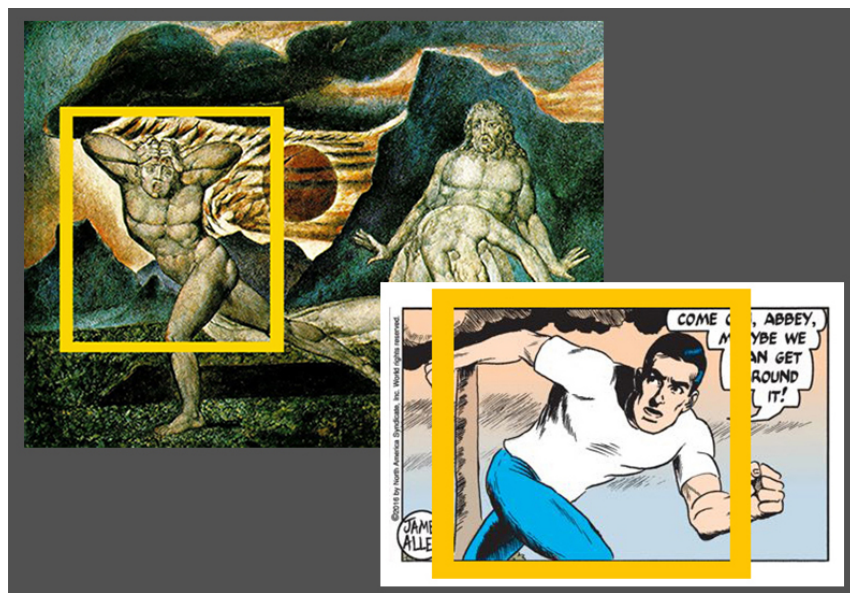
EXAMPLE #2: Derivative works as "homage works." [Top Left] Titian: *Venus of Urbino*, 1538; [Top Right] Edouard Manet: *Olympia*, 1865; [Bottom Left] Mel Ramos: *Manet's Olympia*, 1973; [Bottom Right] Larry Rivers: *I Like Olympia in Blackface*, 1970



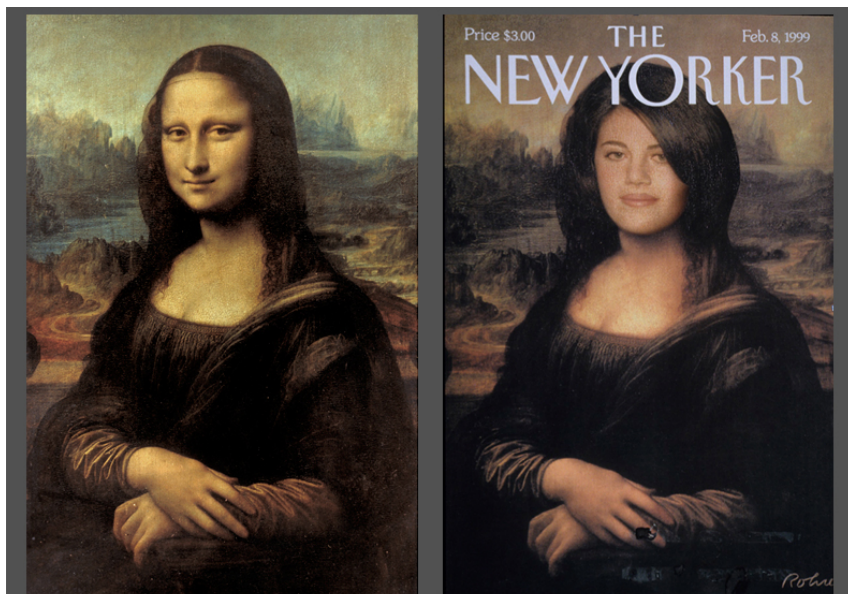
EXAMPLE #3: Derivative works and the public domain. Contemporary graphic designers, like Minneapolis' Adam Turman, adapt public domain works like [L] Alphonse Mucha's 1902 Art Nouveau poster to create new expressions [R] having a similar theme and composition.



EXAMPLE #4: Derivative works and the public domain. Norman Rockwell adapted the figure of the Prophet Isaiah from Michelangelo's Sistine Chapel frescoes for his magazine cover illustration of Rosie the Riveter for the May 29, 1943 issue of the *Saturday Evening Post*.



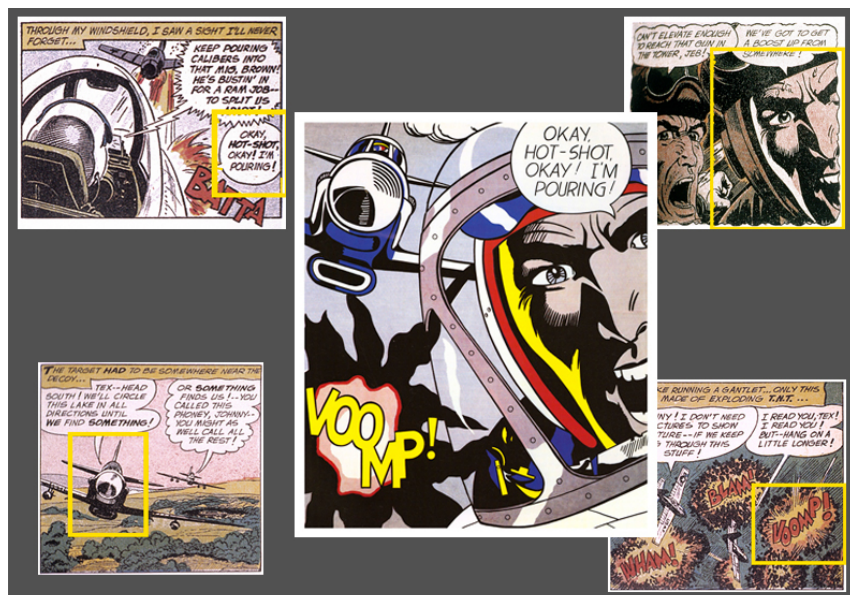
EXAMPLE #5: Partially derivative works using selected elements of composition or figure pose. Close analysis of the selected details shows that artist James Allen has borrowed the twisted torso, running legs, and agonized face of Cain from William Blake's *The Body of Abel Found by Adam and Eve* (ca. 1826), reversing these in the figure of Mark Trail for a syndicated newspaper comic strip (December 6, 2018).



EXAMPLE #6: Fair Use of a photographic reproduction (the Bridgeman v. Corel case). Dean Rohrer's "Monica Lewinsky" cover for the New Yorker (February 8, 1999) is a partial re-working of a reproduction of Leonardo da Vinci's famous Mona Lisa (ca. 1503-1506). The Bridgeman v. Corel case established that straightforward photographic reproductions of two-dimensional public domain art works are not copyrightable.



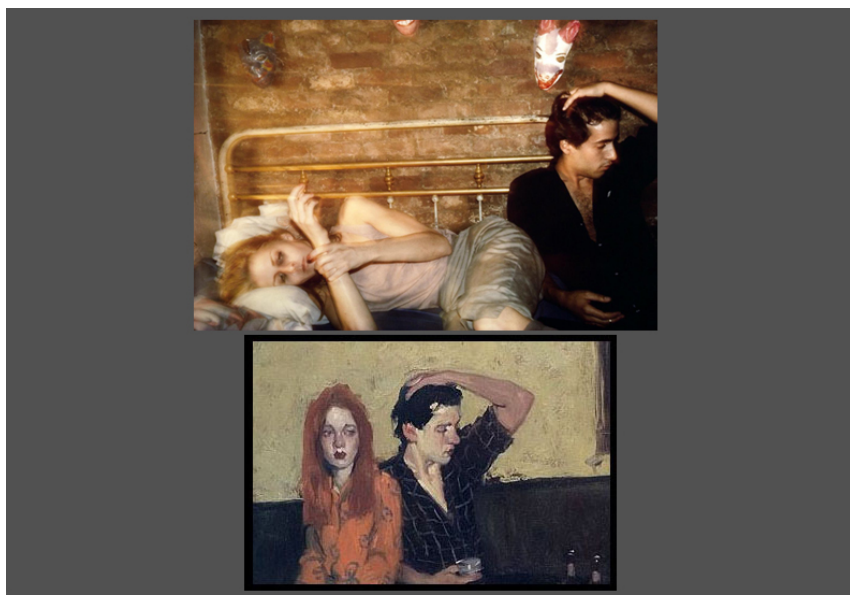
EXAMPLE #7: Fair Use of a copyrighted work – parody, satire, or a combination of both?
[Left] Grant Wood: American Gothic (1930); [Right] The Rake, magazine cover, June, 2003.



EXAMPLE #8: Transformative use of selected portions of a copyrighted work. Pop Art painter Roy Lichtenstein appropriated the highlighted details from different panels of a copyrighted story in DC Comics' *All-American Men of War* #89, issued in 1962, for his Pop Art painting *O.K. Hot Shot* later the same year.



EXAMPLE #9: Transformative use of an entire copyrighted work. Comic artist Trina Roberts re-works the entirety of Reginald Marsh's 1934 painting *High Yaller* in the opening panel of *Lulu's Back in Town* (1976). While she retains nearly every aspect of Marsh's composition and figure poses, Roberts has completely altered the original work's style and format.



EXAMPLE #10: Transformative fair use or copyright infringement? The male figure on the right of Nan Goldin's 1992 photograph "Greer and Robert on the Bed, NYC" was later adapted by Minneapolis painter Malcolm Liepke in the work shown below. Does this example of creative re-use of part of a copyrighted work meet the legal standards for transformative fair use?

Appendix 7: Illustrating a Technical Manual

IN-CLASS WORKSHEET

Illustrating a Technical Manual: Image Copyright and Fair Use In-Class Worksheet

Your Research Topic

Think about your manual's topic and the type of images you need to illustrate it. For example, if your topic is tying shoes, you might want images of people wearing shoes with laces. If your topic involves landscaping maintenance, you might need some accurate photographs of plants.

1. What is the topic of your how-to manual? What type of images will you need?

Finding Images

Use the **[list on the Libraries website/Libguide we discussed in class/insert your own preferred list of copyright-friendly websites here]** to explore some online collections of public domain and Creative Commons images to find images related to your topic.

2. Select three potential images relevant to your topic.

Image 1:	URL:	Notes:
Image 2:	URL:	Notes:
Image 3:	URL:	Notes:

Now answer some questions about the images' copyright status and your right to use them in your technical manual:

3. Does the provider of the online image own the rights to it?
4. What rights are the providers of the image extending to you, if any?
5. What use could you make of the images in your manual? Would it be an acceptable use under the terms of copyright and fair use?

TAKE-HOME ASSESSMENT

[This summative assessment is designed to be completed after the final project is finished. It could be distributed in person, via email, or on a Google form or other online survey. The colors match up to the corresponding parts of the scoring rubric.]

Illustrating a Technical Manual: Image Copyright and Fair Use Take-Home Assessment Exercise

This exercise reinforces the image research that your class did during the library workshop about illustrating your technical manual.

It tests your ability to understand image copyright status and ways to use images legally and ethically.

You can refer to the Image Copyright and Fair Use Worksheet we used in class to help you complete this exercise and you can view the scoring rubric to help you understand what to include in your answers.

[list/link URLs to both if available or attach copies]

[Responses are due by XX/XX/XXXX]

Thank you!

1. Last name
2. First name
3. Please describe two differences between copyrighted and public domain images. Next, describe what a Creative Commons license is.
4. What was the subject of your technical manual?
5. Please share an image you used to illustrate an issue/process/situation in your technical manual. Where did you find the image? Did you create it yourself? Find it online? If so, where?
(Copy and paste the image's URL if it is already online, or just describe it below if it is one you created yourself and it's not posted anywhere online.)
6. Is the image you selected copyrighted, shared with a Creative Commons license, or in the public domain? How do you know?
7. Based on your image's copyright status, should you use it in your manual? How can you justify its use? If it is copyrighted, does the principle of Fair Use apply?

TECHNICAL MANUAL RUBRIC

There are three things to judge on (green, blue, and purple).

If you do everything on the bad side (AND, AND), you get a 0

If you do more on the bad side than good (OR, OR), you get a 1

If you do more on the good side than bad (OR, OR), you get a 2

If you do everything on the good side (AND, AND), you get a 3

0 Emerging	1 Developing	2 Proficient	3 Distinguished
Cannot accurately describe the differences between copyrighted, Creative Commons, and public domain images.	Cannot accurately describe the differences between copyrighted, Creative Commons, and public domain images.	Accurately describes the differences between copyrighted, Creative Commons, and public domain images in detail.	Accurately describes the differences between copyrighted, Creative Commons, and public domain images in detail.
AND Selects copyrighted images for project whose use does not seem justified by Fair Use.	OR Selects copyrighted images for project whose use does not seem justified by Fair Use.	OR Selects copyright-friendly images for project (their own images, public domain images, Creative Commons licensed images, or copyrighted images justified by Fair Use).	AND Selects copyright-friendly images for project (their own images, public domain images, Creative Commons licensed images, or copyrighted images justified by Fair Use).
AND Does not persuasively justify the use of their image (includes using their own, public domain, or Creative Commons images but not describing why those are used appropriately; or by using copyrighted images and not providing sound Fair Use reasoning).	OR Does not persuasively justify the use of their image (includes using their own, public domain, or Creative Commons images but not describing why those are used appropriately; or by using copyrighted images and not providing sound Fair Use reasoning).	OR Persuasively justifies the use of their image by explaining the rules for using their own, public domain, or Creative Commons images; or by providing sound Fair Use reasoning for using copyrighted images.	AND Persuasively justifies the use of their image by explaining the rules for using their own, public domain, or Creative Commons images; or by providing sound Fair Use reasoning for using copyrighted images.

PRESENTATION

Illustrating A Technical Manual: Image Copyright and Fair Use



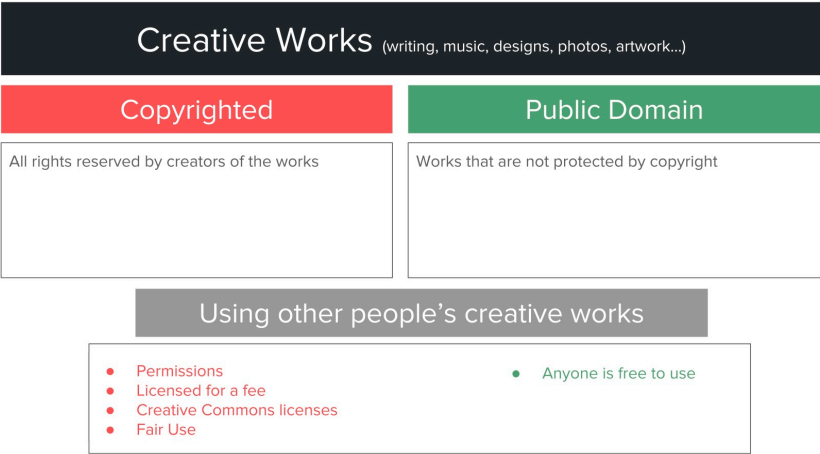
Libraries workshop with art librarian Karyn Hinkle

Today's agenda:

- Introductions for class and librarian
- Copyright & Fair Use lecture and discussions
- Image searching practice

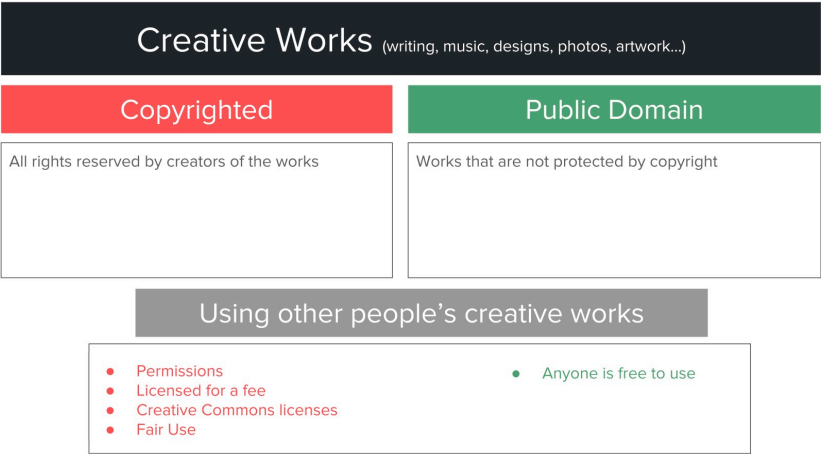
By the end of this workshop, you will be able to:

- recognize the difference between copyrighted and public domain images
- explain two legal methods of using copyrighted images in your work (fair use and Creative Commons licenses)
- select images for your projects from online collections of public domain and Creative Commons images
- summarize your images' copyright status and defend your use of the images in your projects



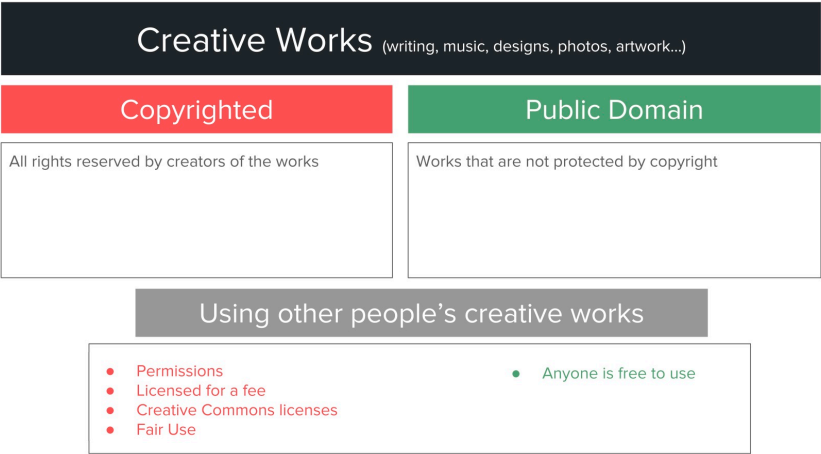
Copyright

- Is **legal protection** automatically provided to creators of original creative work (U.S. Constitution, article 1, section 8)
- Includes **literary, dramatic, musical, and artistic** works
- Gives creators/owners the **exclusive** right to:
 - Reproduce (copy) or distribute the original work to the public
 - Create new works based upon the original
 - Perform or display the work publicly
- Automatically** begins when an original creative work is put in a fixed, tangible form
- Lasts for the **life of the creator + 70 years** from their death for his/her heirs (original works created after 1977)
- Limits include **Fair Use**, **First Sale**, and works in the **Public Domain**
- Violating its rules is against the law. **Copyright infringement** will be tried in court. You can't avoid a copyright infringement claim just by citing your sources.



Public Domain

- Works can be **freely used** by anyone, for commercial or noncommercial purposes, **without permission** from an original copyright owner/creator
- Some works are not copyrightable, so they **automatically** enter the public domain:
 - Titles, names, short phrases and slogans, familiar symbols, numbers
 - Ideas and facts (e.g. famous dates)
 - Processes and systems
 - **Government works and documents**
- Some works have been **assigned to the public domain** by their creators
- Some works have entered the public domain because their **copyright has expired**
- All works published **in the U.S. before 1923** are in the public domain
- Anything copyrighted from the **late 1970s** to the present may not become public domain during our lifetime



Copyright

- Limits include **Fair Use**, **First Sale**, and works in the **Public Domain**

Using Copyrighted Work: **Fair Use**

- Allows the public to **use portions of copyrighted work without permission** from the copyright owner.
- Decided by courts on a **case-by-case basis** after balancing the **four factors** (listed in section 107 of the Copyright Act)
- Courts have found **in favor of fair use** in cases of: Criticism & Commentary, Parody, News reporting, Art, Scholarship and Research, Time-shifting (TV recordings), Search Engines
- To decide whether a use is a fair use, courts look at **four factors**:
 - The **purpose and character** of the second use (Is it just a copy, or are you doing something different from the original work? Is your use commercial?)
 - The **nature of the original** (Was the original work creative or primarily factual?)
 - **Amount** used: How much of the original work was used, and was that amount necessary?
 - **Effect**: Did the use harm the market for the original work? For example, would people buy this work instead of the original?
- Has little to do with attribution: you can be sued for copyright infringement whether or not you credit to the source

Using Copyrighted Work: Fair Use

- The writer's use of the work, whether in part or in whole, should be justified by the analytic objective, and the user should be prepared to articulate that justification.
- The writer's analytic objective should predominate over that of merely representing the work or works used.
- The amount and kind of material used and (where images are concerned) the size and resolution of the published reproduction should not exceed that appropriate to the analytic objective.

CAA PRINCIPLE: In their analytic writing about art, scholars and other writers (and, by extension, their publishers) may invoke fair use to quote, excerpt, or reproduce copyrighted works, subject to certain limitations:

- Justifications for use and the amount used should be considered especially carefully in connection with digital-format reproductions of born-digital works, where there is a heightened risk that reproductions may function as substitutes for the originals.
- Reproductions of works should represent the original works as accurately as can be achieved under the circumstances.
- The writing should provide attribution of the original work as is customary in the field, to the extent possible

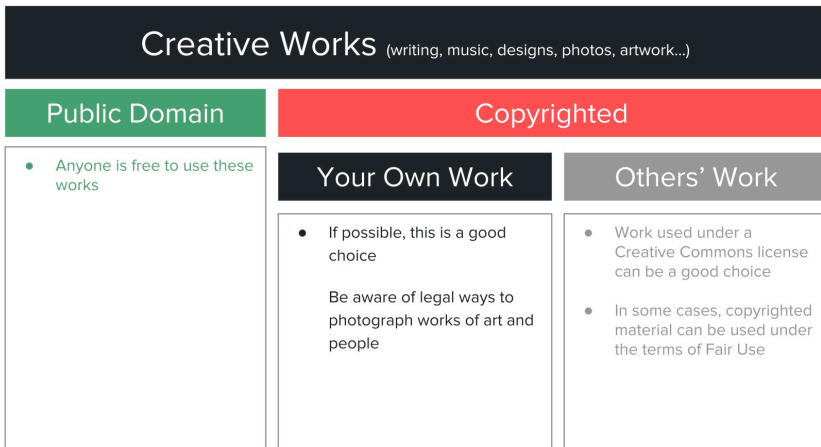
Using Copyrighted Work: Fair Use

CAA PRINCIPLE: Artists may invoke fair use to incorporate copyrighted material into new artworks in any medium, subject to certain limitations:

- Artists should avoid uses of existing copyrighted material that do not generate new artistic meaning, being aware that a change of medium, without more, may not meet this standard.
- The use of a preexisting work, whether in part or in whole, should be justified by the artistic objective, and artists who deliberately repurpose copyrighted works should be prepared to explain their rationales both for doing so and for the extent of their uses.
- Artists should avoid suggesting that incorporated elements are original to them, unless that suggestion is integral to the meaning of the new work.
- When copying another's work, an artist should cite the source, whether in the new work or elsewhere (by means such as labeling or embedding), unless there is an articulable aesthetic basis for not doing so.

Using Copyrighted Work: Creative Commons licenses

- Sometimes a creator may want to give everybody the permission to make copies of his or her work.
- One set of licenses that exist for this purpose are Creative Commons licenses.
- Creative Commons licenses forge a balance inside the traditional "all rights reserved" setting that copyright law creates.
- Creative Commons tools give creators a simple, standardized way to grant copyright permissions to their creative work.
- Creates a pool of content that can be copied, distributed, edited, remixed, and built upon, all within the boundaries of copyright law.



Copyright Resources

The College Art Association's Code of Best Practices in Fair Use for the Visual Arts:
www.collegeart.org/pdf/fair-use/best-practices-fair-use-visual-arts.pdf

Good advice and lists of public domain sources (with sections devoted particularly to images) from MIT Libraries:
<https://libraries.mit.edu/scholarly/publishing/using-copyrighted-content/>

Easy-to-understand information about copyright aimed at K-12 teachers:
<https://www.teachingcopyright.org/>

Copyright-friendly image resources compiled by the University of Kentucky Libraries:

- Creative Commons -- click [here](#) for information on the different CC licenses
- Wikimedia Commons -- Public domain media and freely-licensed educational content
- Flickr: The Commons -- Many public domain and CC images, including sets from the Library of Congress & the New York Public Library
- Digital Public Library of America -- Images from America's libraries, museums, & archives
- Europeana Collections -- Similar to the DPLA linked above, but for Europe
- Vecteezy.com -- Search and download free vector images

More lists of public domain sources and others:
<https://the8blog.wordpress.com/2011/04/05/public-domain-images-for-student-projects/>
<https://the8blog.wordpress.com/2010/10/05/nine-copyright-friendly-sites-for-student-multimedia-projects/>

Appendix 8: Canadian Copyright and Fair Dealing in Relation to Architectural Images and Models in the Academic Setting

Canadian Copyright and Fair Dealing in
Relation to Architectural
Images and Models
in the Academic Setting

Laurentian University
McEwen School of Architecture Library
Sudbury, ON
Canada

Definitions:

- Copyright
- Plagiarism
- Fair Dealing

The *Copyright Act* of Canada prohibits others from copying a work without permission from the owner.

Copyright is a form of intellectual property that applies to original literary, dramatic, musical and artistic works.

Artistic works include paintings, drawings, maps, photographs, sculptures, plans, as well as architectural works.

"A Guide to Copyright"
Government of Canada

Architectural works are defined broadly as “buildings or structures or any model of a building or structure.”

“A Guide to Copyright”
Government of Canada

“A work must be ‘original’ to be protected by copyright. This means it must be created by an author and be something more than a pure mechanical reproduction.... Copyright protection extends to the overall form as well as the arrangement and composition of spaces and elements in the design.”

Taras Kulish, Senior IP Lawyer
Steinberg Totle Hope & Israel LLP

“Plagiarism is using someone else’s work without giving them credit. This is a form of academic dishonesty...”

“Properly citing sources protects against *plagiarism*.”

“Properly citing a work is essential in an academic community but does not protect against copyright infringement.”

“Using Images: Copyright & Fair Use”
LibGuides at MIT Libraries

The use of the *Chicago Manual of Style* (the McEwen School’s preferred style) helps to mitigate plagiarism...

Laurentian’s policy on Academic Integrity for Students provides examples of plagiarism, including:

“Failing to acknowledge sources through the use of proper citations when using another’s work and/or failing to use quotation marks and/or other citation conventions.”

“Policy on Academic Integrity for Students”
Laurentian University

Sourcing Images

In the discipline of architecture, research assignments often call for the integration of images available in the public domain or for scholarly reuse.

To source images, check the *Artstor Digital Library* (a visual resource database available by subscription) as well as images from the Web through Archnet, Flickr Creative Commons, Getty – Open Content Program, Google Advanced Image Search and Wikimedia Commons.

Citing Images

For a research paper, create an Appendix or “Figure Sources Page” that lists the images included in the text, their sources, and, perhaps, relevant annotations.

The Colgate Visual Resources Library is an excellent online guide that provides sample bibliographic entries for citing images, *Chicago Style*.

Fair Dealing and the *Copyright Act* of Canada

"Fair dealing is a user's right in copyright law permitting use of, or "dealing" with, a copyright protected work without permission or payment of copyright royalties. The fair dealing exception in the *Copyright Act* allows you to use other people's copyright protected material for the purpose of research, private study, education, satire, parody, criticism, review or news reporting, provided that what you do with the work is 'fair'."

"What is fair dealing and how does it relate to copyright?"
Simon Fraser University Library

"Following fair [dealing] principles protects against *copyright infringement*."

"Copyright infringement can occur when using someone else's copyrighted work without permission or without a solid fair [dealing] case."

"Using Images: Copyright & Fair Use"
LibGuides at MIT Libraries

Laurentian subscribes to an Access Copyright license to ensure legal copyright and content usage. The university has not formally adopted a fair dealing policy though it operates in ways consistent with fair dealing in Canadian copyright law.

The appropriation of limited amounts of work for educational purposes typically falls under the “fair dealing” exception.

Generally speaking, however, to make a fair dealing assessment based on the *Canada Act*, there are six criteria that the courts consider:

1. The purpose of the dealing (Is it commercial or research/educational?)
2. The amount of the dealing (How much was copied?)
3. The character of the dealing (What was done with the work? Was it an isolated use or an ongoing, repetitive use? How widely was it distributed?)
4. Alternatives to the dealing (Was the work necessary for the end result? Could the purpose have been achieved without using the work?)

5. The nature of the work (Is there a public interest in its dissemination? Was it previously unpublished?)

6. The effect of the dealing on the original work (Does the use compete with the market of the original work?)

“Copyright Requirements for Laurentian Faculty and Staff”
Laurentian University

Tension between Copyright and Appropriation

In this age of copyright, it is intriguing that the discipline of architecture encourages the cross-pollination of ideas and designs, i.e., incorporating the good design concepts of others using a fresh approach or for new purposes and often, in a sustainable way.

Architectural Models

Students should be able to articulate the influences and deliberate design choices that are at play and expressed through their sketches, posters, and architectural models.

Attribution and Fair Dealing

Oftentimes, the more professional student presentations showcasing sketches, posters and/or models are ones that acknowledge the design influences of others, especially when it can be shown that a student has built upon these influences and achieved innovations given the constraints of the assignment or the client's expressed requirements.

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Kulish, Taras. "Trademark and Copyright protection in Canada for Architects, Engineers and Designers." *SCCC Ontario Swiss Canadian Chamber of Commerce (Ontario) Inc.* (Winter 2015). Accessed August 13, 2017, http://www.swissbiz.ca/is_article.php?articleid=30

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LibGuides at MIT. "Using Images: Copyright & Fair Use." Accessed August 13, 2017. <http://libguides.mit.edu/c.php?g=176183&p=1158973>

Simon Fraser University Library. "What is fair dealing and how does it relate to copyright?" Accessed August 13, 2017. <http://www.lib.sfu.ca/help/academic-integrity/copyright/fair-dealing>

Appendix 9: Tracking Transformative Use in Your Writing About Art

SPREADSHEET

Fig. No.		A	B	C	D	E	F	G	H	I	J	K	L
1	2	Fig. No.	Filename	Caption	Date Created	Public Domain?	Fair Use Reasoning	Image size and resolution	Need image?	Notes	Copyright Holder	Request Sent	Permission Received
2	3	2		Leonardo Da Vinci, Mona Lisa, 1503-1517, Louvre	1503-1517	Yes			Request high quality scan from V&A				
3	4	17	Birmingham.tif	Andy Warhol, Birmingham Race Riot, 1964, Brooklyn Museum, BE 203.9	1964	No	This image is the primary image for my analysis on photojournalism and civil rights movement and helps further my argument. I will add a 72 dpi image that is 1500 pixels on the long side for my dissertation, which will be legible and large enough in the PDF but not professional print quality.	72 dpi: 1536 x 1283		http://www.artcy.com/andy-warhol-mona-lisa-image-website/for-website-5-3-2016.html	ARG		
4	5	29	1960_211.tif	Irving Penn, Frederick Kiesler & Willem de Kooning, New York, May 4, 1960, Art Institute of Chicago, 1999.211	1960	No				KYZ is contact for permissions	Irving Penn Fdn.	12/16/2015	1/10/2016
5	6	30	13879.tif	Louis Comfort Tiffany, Hibiscus and Florida, Metropolitan Museum of Art, 1900-315	1910-20	Yes				Downloaded from Antior IAP		1/13/2016	IAP

PRESENTATION

Using Images Fairly In Your Writing About Art

Bridget Madden
Associate Director, Visual Resources Center
University of Chicago Department of Art History

DETERMINE COPYRIGHT STATUS

- Tools:
 - [Peter Hirtle's Chart Detailing Copyright Term in the US](#)
 - [Lolly Gasaway's Chart When U.S. Works Pass into the Public Domain](#)
 - [Digital Slider](#)
- Is it available in an open image collection?
 - [Creative Commons licenses](#)
 - [IAP](#), other educational licenses
 - VRC's [List of Copyright Free or Copyright Lenient Image Collections](#)



From <http://www.collegeart.org/pdf/fair-use/fair-use-power-point.pptx>

Section One: ANALYTIC WRITING

- Should be justified by the analytic objective, and the user should be prepared to articulate that justification
- The analytic objective should predominate over that of merely representing the work(s) used
- The size and resolution of the published reproduction should not exceed that appropriate to the analytic objective
- Carefully consider justifications in connection with digital-format reproductions of born-digital works
- Reproductions of works should represent the original work as accurately as can be achieved
- Provide attribution of the original work

DOES FAIR USE APPLY? IS IT TRANSFORMATIVE?

JUDGES ASK:

- Is the use for a new “transformative purpose”? (in terms of context, audience, added insight, etc.)
- Does it employ an appropriate amount to fulfill the transformative purpose?

From: <http://www.collegeart.org/pdf/fair-use/fair-use-power-point.pptx>

CAMPUS FAIR USE RESOURCES

- [Fair Use Lib Guide](#)
- [Copyright Info Center Fair Use Checklist](#)
- [Dissertation Requirements from the Student Manual](#)

DOCUMENTING YOUR DECISIONS

Tracking Images and Fair Use											
File Edit View Insert Format Data Tools Add-ons Help All changes saved in Drive											
100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100% 100%											
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Pg. No.	Filename	Caption	Date Created	Public Domain?	Fair Use Reasoning	Image size and resolution	Need image?	Notes	Copyright Holder	Request Sent	Permissions Received
1		Leonardo DaVinci: Mona Lisa, 1503-1517, Louvre	1503-1507	Yes	This image is the primary image for my analysis on photographic reproduction and copyright movement and helps further my argument. I will submit a 72 dpi image that is 1500 pixels on the long side for my dissertation, which will be printed and large enough to view in a PDF but not professional print quality.	72 dpi: 1536 x 1283	Request high quality scan from V&C	http://www.artory.com/only-orig-images-images-the-mona-lisa/	ARS		
2	17	Andy Warhol: Birmingham Place Print, 1964, Brooklyn Museum, 86.285.9	1964	No							
3	29	Irving Penn: Fredericka S. Keller & Willem de Kooning, New York, May 4, 1960, Art Institute of Chicago, 1986.211	1960	No				KYC is contact for permissions	Irving Penn Fan	12/16/2015	1/10/2016
4	30	Lois Corbitt: Tilling, Hokusai and Parrots, Reinhardt Museum of Art, 1990.315	1910-20	Yes				Downloaded from Artstor JAP		1/13/2016	JAP
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https://docs.google.com/spreadsheets/d/1g6lr-ex-eltwf1saNs_TnU73TfelgGG6_0V9bQljrwQ/edit?usp=sharing

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 - For docs, PPTs, and PDFs: 72-150 dpi, ~1500 pixels on the long edge
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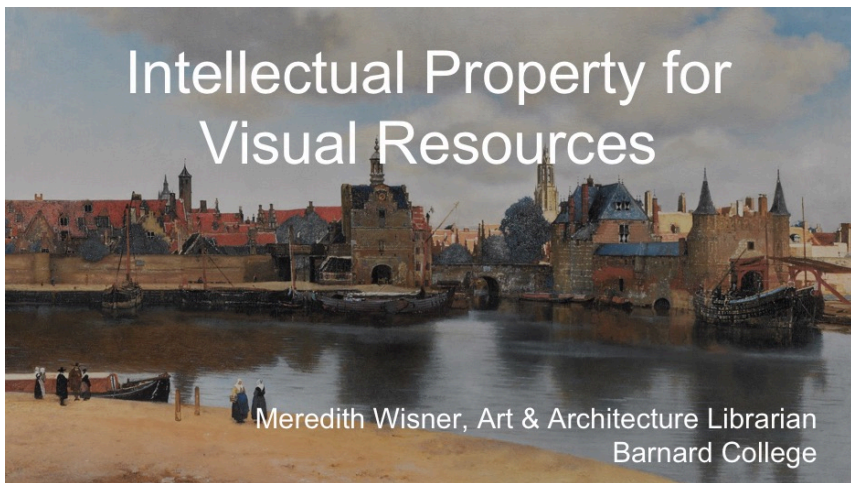
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- If fair use does not apply, what rights need to be cleared?
- Consider the underlying rights of the **work** in question and the copyright status of the **reproduction**
 - [Digital Image Rights Computator](#)
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- Even if your use is fair, it may still be important to clear rights
 - Example: to preserve personal or working relationship with artist, copyright holder, or institution
- Sample permission letters in Susan Bielstein's [Permissions, A Survival Guide](#) (2006)

Appendix 10: Intellectual Property for Visual Resources

PRESENTATION





Bobbin Lace Production: 17th Century

CAA Code of Best Practices

PRINCIPLE: In their analytic writing about art, scholars and other writers (and, by extension, their publishers) may invoke fair use to quote, excerpt, or reproduce copyrighted works, subject to certain limitations:

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- The writer's objective should predominate the use of the image
- The amount used and its resolution should not exceed what is required
- Justifications for use should be considered especially carefully in connection with digital-format reproductions
- Reproductions of works should represent the original work accurately
- The writing should provide attribution



Johannes Vermeer, *The Lacemaker*, 1669 - 1670.

- High resolution, color correct, uncropped
- Accurate citation information
- Rights information

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- **Nature** of the copyrighted work
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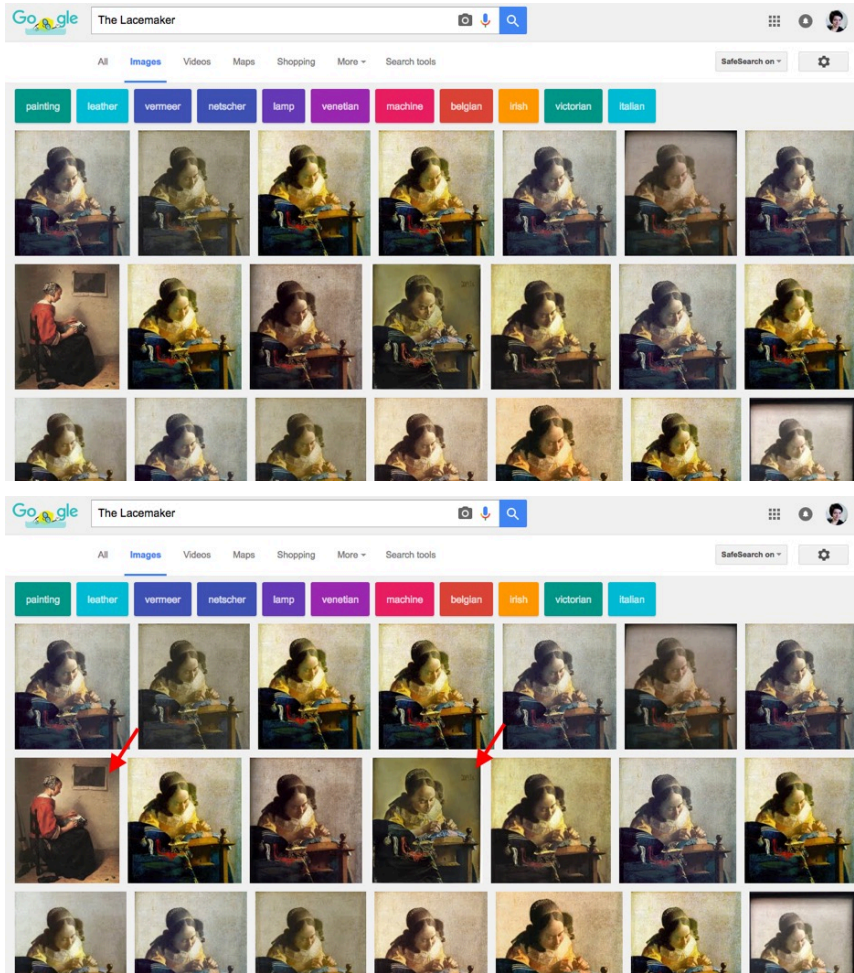


Johannes Vermeer, *The Lacemaker*, 1669 - 1670.
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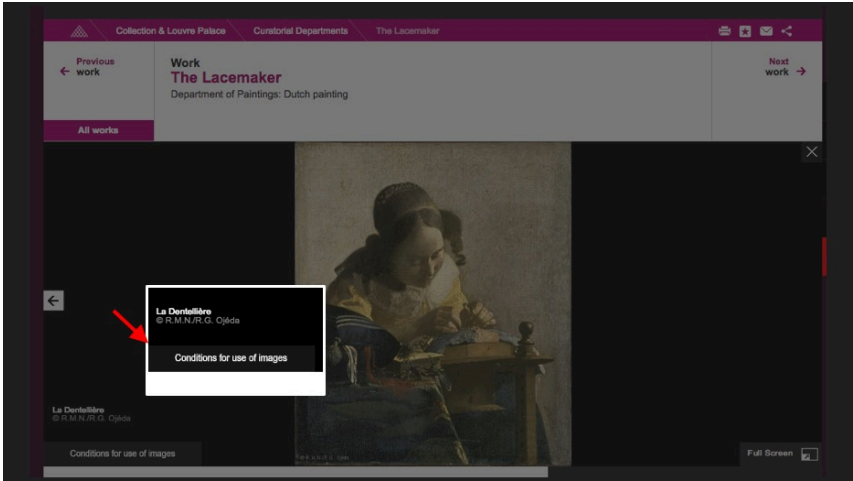
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- Title
- Date created
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- Where image is from
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Google

Appendix 10: Intellectual Property for Visual Resources



Musée du Louvre



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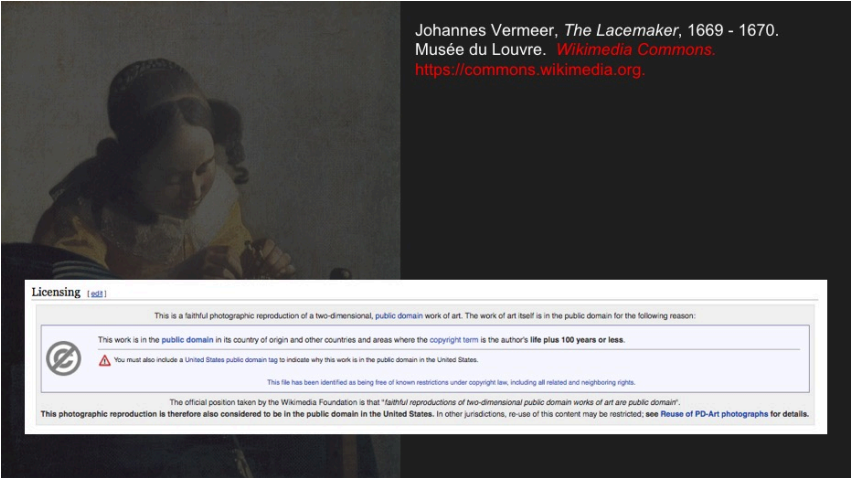
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Johannes Vermeer, *The Lacemaker*, 1669 - 1670.
Musée du Louvre.

- Painting
 - Public domain
 - Musée du Louvre
- Reproduction
 - Under French copyright
 - RMN

Appendix 10: Intellectual Property for Visual Resources





Johannes Vermeer, *The Lacemaker*, 1669 - 1670.
Musée du Louvre. *Wikimedia Commons*.
<https://commons.wikimedia.org>.

According to US District Court case: *Bridgeman Art Library LTD v. Corel Corp.* 1998:

As summarized by Susan M. Bielstein in her book *Permissions: A Survival Guide*:

“‘Slavish copying’ did not reflect ‘the modest amount of originality required for copyright protection.’”

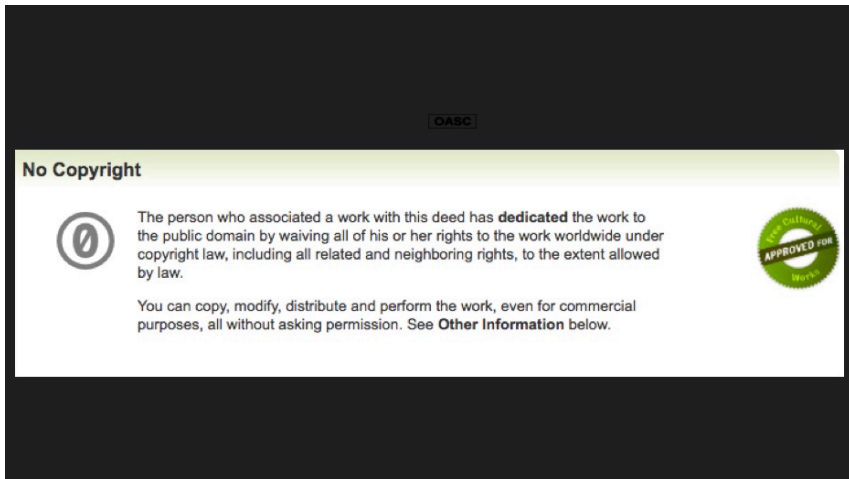
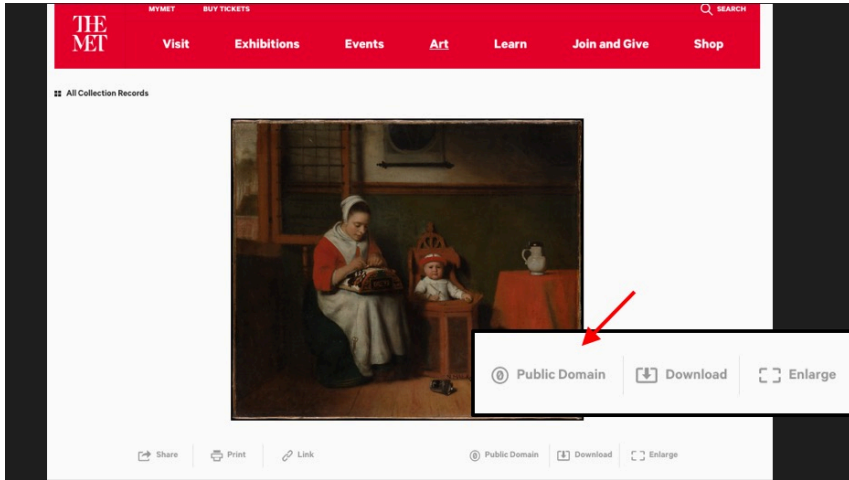
This case law applies to US Copyright law surrounding reproductions of 2 dimensional artistic works.



Metropolitan Museum of Art




Nicolaes Maes, *The Lacemaker*, 1656. Oil on canvas.
Metropolitan Museum of Art. <https://metmuseum.org>.



Appendix 10: Intellectual Property for Visual Resources



Salvador Dali. *The Lacemaker* (after Vermeer), 1955, Oil on canvas, Metropolitan Museum of Art. <https://metmuseum.org>.

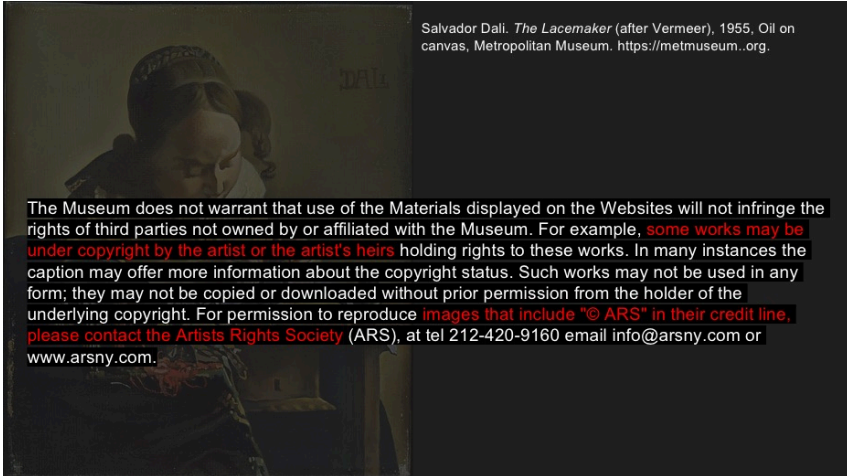


Additional Images

The Lacemaker (after Vermeer)

Artist:	Salvador Dali
Date:	1955
Medium:	Oil on canvas
Dimensions:	9 1/4 x 7 3/4 in. (23.5 x 19.7cm)
Classification:	Paintings
Credit Line:	Robert Lehman Collection, 1975
Accession Number:	1975.1.232
Rights and Reproduction:	© 2016 Artists Rights Society (ARS), New York

Accession Number:	1975.1.232
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Salvador Dalí. *The Lacemaker* (after Vermeer), 1955, Oil on canvas, Metropolitan Museum. <https://metmuseum.org>.

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Race, Gender and Copyright Law

Appendix 10: Intellectual Property for Visual Resources



Detail: Johannes Vermeer, *The Lacemaker*, 1769-70, Oil on canvas, Musée du Louvre. *Wikipedia*. <https://en.wikipedia.org>.



Unknown, Bobbin lace cuffs, 1640, Linen Rijksmuseum. <https://www.rijksmuseum.nl>.

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